(22,871)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 102.

THE PLYMOUTH COAL COMPANY, PLAINTIFF IN ERROR,

vs.

THE COMMONWEALTH OF PENNSYLVANIA, DAVID T. DAVIS, INSPECTOR OF MINES, &c.

IN ERROR TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA.

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a UNITED STATES OF AMERICA, ss:

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Pennsylvania, Greeting:

[Seal of the Supreme Court of the United States.]

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The Commonwealth of Pennsylvania, plaintiff, and The Plymouth Coal Company, defendant, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution,
b or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said defendant as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the 15th day of September, in the year of our Lord one thousand nine hundred and eleven.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

c UNITED STATES OF AMERICA:

Supreme Court of the United States.

UNITED STATES,
Middle District of Pennsylvania, ss:

To the Honorable the Supreme Court of the United States:

Your petitioner, the Plymouth Coal Company, of Wilkes-Barre in the County of Luzerne, in the middle district of Pennsylvania shows unto your Honors that heretofore, to wit, on the 23d day of May, 1911, at Philadelphia, in the County of Philadelphia in said Commonwealth of Pennsylvania, in which the Commonwealth of Pennsylvania was plaintiff and your petitioner was defendant, final judgment was rendered against your petitioner in the Supreme Court within and for the Commonwealth of Pennsylvania, being the highest court of law or equity of the said State in which a decision could be had in said suit, as appears by the records of said Supreme Court hereto annexed, and made a part of this Petition. And your petitioner says that in the trial of said case there was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; and wherein was drawn in question the validity of a statute of, and authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, and laws of the United States, and the decision was in favor of such their validity; and wherein was drawn in question the construction of a clause of the Constitution, and of a treaty, and statute of, and commission held under, the United States, and the decision was against the title, right, privilege, and exemption, specially set up and claimed under such clause of the said Constitution, treaty, Statute and commission, and a manifest error hath happened to the great damage of your petitioner.

Wherefore, your petitioner prays that a Writ of Error to the Supreme Court of the United States may issue in due form of law, and he will ever pray, &c.

THE PLYMOUTH COAL COMPANY,
By JOHN C. HADDOCK, *President.*

Allowed September 11, 1911.
O. W. HOLMES,
Justice Supreme Court of United States.

WM. C. PRICE, *Att'y,*
Wilkes-Barre, Pa.

d [Endorsed:] Commonwealth of Pennsylvania upon the application of David T. Davis, inspector of Mines, etc., Def't in Error, vs. The Plymouth Coal Company, P't'ff in Error. Petition for Writ of Error. No. 222 Jan'y Term 1911 in the Supreme Court of Penna. To the Clerk U. S. Supreme Court: Issue writ of

error to the Supreme Court of Pennsylvania to remove the records and proceedings in the above case, in pursuance of the within petition for writ of error allowed by the Honorable Justice Holmes. Wm. C. Price, Att'y for pl'ff in error. Wm. C. Price, Wilkes-Barre, Pa., Att'y for The Plymouth Coal Co., pl'ff in error.

e UNITED STATES OF AMERICA, *ss:*

To Commonwealth of Pennsylvania, David T. Davis, Inspector of Mines, etc., Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the Supreme Court of Pennsylvania wherein the Plymouth Coal Company is the plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable O. W. Holmes, Associate Justice of the Supreme Court of the United States, this eleventh day of September, in the year of our Lord one thousand nine hundred and eleven.

OLIVER WENDELL HOLMES,
Associate Justice of the Supreme Court of the United States.

f I hereby accept service of the foregoing citation in behalf of the defendant in error this 14th day of September, 1911, and request that my appearance be entered for said defendant in error.

EVAN C. JONES,
Att'y for Defendant in Error.

2d Nat. Bank Blg., Wilkes-Barre, Pa.

g [*Bond on Writ of Error.*]

Know all Men by these Presents, That We, the Plymouth Coal Company of Luzerne County, Pa., as principal, and Thomas R. Phillips of Kingston, Luzerne County, Pa., as surety are held and firmly bound unto the Commonwealth of Pennsylvania in the full and just sum of two hundred and fifty dollars to be paid to the said Commonwealth of Pennsylvania certain Attorney, Executors, Administrators, or Assigns; to which payment well and truly to be made we bind ourselves, our Heirs, Executors, and Administrators, jointly and severally, by these Presents.

Sealed with our seals, and dated the 5th day of Sept. in the year of our Lord one thousand nine hundred and eleven.

Whereas lately at a session of the Supreme Court of Pennsylvania in a suit depending in said Court between The Commonwealth of Pennsylvania, upon the application of David T. Davis, Inspector of

Mines, etc., plaintiff, and the Plymouth Coal Company, defendant, to No. 222 January term, 1911, in the Supreme Court of Pennsylvania judgment was rendered against the said Plymouth Coal Company, defendant and the said Plymouth Coal Company, defendant having procured a writ of error and filed a copy thereof in the clerk's office of the said Court to reverse the judgment in the aforesaid suit, and a citation directed to the said plaintiff citing and admonishing her to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next:

Now the condition of the above obligation is such, that if the said Plymouth Coal Company shall prosecute her said writ of error to effect, and answer all damages and costs, if she fail to make her plea good, then the above obligation to be null and void; otherwise to remain in full force and virtue.

Signed, sealed and delivered in presence of

[Seal The Plymouth Coal Company. Incorporated July 7, 1896.]

THE PLYMOUTH COMPANY, [L. S.]
By JOHN C. HADDOCK, *President.* [L. S.]
THOS. R. PHILLIPS. [L. S.]

[Seal The Plymouth Coal Company. Incorporated July 7, 1896.]

Attest:
JOHN P. POLLOCK, *Secretary.*

Witness:
EDMUND E. JONES
As to Thos. R. Phillips' Signature.

Approved:
O. W. HOLMES,
Justice Supreme Court of U. S.

Sept. 11, 1911.

h [Endorsed:] Bond. Wm. C. Price, Att'y for Plymouth Coal Co., Wilkes-Barre, Pa.

STATE OF PENNSYLVANIA,
County of Luzerne, ss:

Thomas R. Phillips being duly sworn according to law deposes and says that he is the owner of real estate in his own name and right situated in the County of Luzerne, Pa., worth at least one thousand dollars ($1,000) over and above all indebtedness, liens and encumbrances of any kind.

THOS. R. PHILLIPS.

Sworn and subscribed to before me this 5 day of September, A. D. 1911.

My commission expires Jan. 5, 1913.

[Seal Edmund E. Jones, Notary Public.]

EDMUND E. JONES,
Notary Public.

i In the Supreme Court of Pennsylvania, Eastern District, January Term, 1911.

No. 222.

COMMONWEALTH OF PENNSYLVANIA upon the Application of DAVID T. Davis, Inspector of Mines, etc., Defendant in Error,
vs.
PLYMOUTH COAL COMPANY, Plaintiff in Error.

Assignments of Error.

Now comes the said plaintiff in error and respectfully submits that in the record, proceedings, decision and final judgment of the Supreme Court of the State of Pennsylvania in the above entitled matter there is manifest error in this, to wit:

1. The Court erred in holding that the provisions of Section 10 of Article 3 of the Act of June 2. 1891 P. L. 176 of the statute laws of Pennsylvania are not in conflict with and repugnant to Article 14, Section 1 of the amendments to the Constitution of the United States which declares that "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States nor shall any state deprive any person of life, liberty or property without due process of law."

2. The Court erred in affirming the decree of the Court of Common Pleas of Luzerne County sitting in equity, on the appeal taken from said decree to the Supreme Court of the State of Pennsylvania.

WM. C. PRICE,
Attorneys for Plaintiff in Error.

j [Endorsed:] No. 222. Jan. Term 1911. Commonwealth of Pennsylvania upon the application of David T. Davis, inspector of Mines, etc., Def't in Error, vs. The Plymouth Coal Company, P't'ff in Error. Assignments of error on writ of error from Supreme Court of U. S. to the Supreme Court of Pennsylvania.

1 Among the Records and Proceedings enrolled in the Court of Common Pleas in and for the County of Luzerne, in the Commonwealth of Pennsylvania, to No. 16 October Term, 1909, is contained the following:

Copy of Continuance Docket Entry.

COMMONWEALTH OF PENNSYLVANIA upon the Application of David T. Davis, Inspector of Mines of the Ninth District of the First Anthracite Coal Inspection District of Pennsylvania, Acting in Behalf of the said Commonwealth,

VS.

THE PLYMOUTH COAL COMPANY.

In Equity.

Now, 3 Sept., 1909, Plff's Bill of Complaint filed and therewith certificate of B. R. Jones, Solicitor for Plff. that there was not sufficient time to print said bill.

Same day, Injunction Affidavits of David T. Davis and Douglass Bunting filed.

Now 4th day of Sept. 1909 upon filing within bill and motion of counsel for Plaintiff, a preliminary injunction is awarded as within prayed for upon giving surety to be approved by the Court in sum of One Thousand Dollars. Ret. Wednesday Sept. 8, 1909 @ 10 A. M.

GEO. S. FERRIS, *Judge.*

Now 4th day of Sept. A. D. 1909, Bond of David T. Davis with the Title Guaranty and Surety Company of Scranton, Pa. as surety in the sum of One Thousand ($1,000.00) Dollars, approved same day, by Geo. S. Ferris, Judge, filed.

Now 4th day of Sept. 1909, upon motion of counsel for plff. the prayer (*a*) for a preliminary injunction in the above case is amended, so as to enjoin the defendant company from working its mine or coal property, adjoining the mines or coal property of the Lehigh and Wilkes-Barre Coal Company, in the Borough of Plymouth, without leaving a pillar of coal of the thickness or width of at least seventy feet (70) *feet* in each seam or vein of coal worked by them along the line of the Lehigh and Wilkes-Barre Coal Company adjoining property owner, as a barrier pillar, *of* the safety of the employees of either mine, in case the other should be abandoned and allowed to fill with water.

GEO. S. FERRIS, *Judge.*

Now, 4 Sept. 1909 Preliminary Injunction Exit.

Preliminary injunction returned by Fred Rodda, Shff. "Served Plymouth Coal Co. 4 Sept. 1909 by handing to Thomas R. Phillips Treasurer of Plym. Coal Co. a true and attested copy of within Prelim. Inj. and making known to him the contents thereof" and return sworn to.

Now 8" day of Sept. 1909, by agreement of counsel for the plaintiff and defendant the preliminary injunction awarded in the above case and returnable this day is continued until Wednesday, Sept. 15th, at 10 A. M.

BY THE COURT.

Now 15 Sept. 1909 by agreement of counsel for the above parties, plff. and defendant, the injunction granted on Sept. 4, 1909, is continued, and the hearing in the above case is set for Wednesday Sept. 22, 1909.

BY THE COURT.

2 Now 21 Sept. 1909 Printed Bill of Complaint filed.

Now 22nd day of Sept. 1909 by agreement of counsel the preliminary injunction heretofore granted in the above case is continued until Wednesday Sept. 29th, 1909, at 10 A. M.

BY THE COURT.

Now 22" Sept. 1909 F. W. Wheaton, Esq., and Wm. C. Price, Esq., direct their appearance to be entered for defendant.

Bill in Equity returned "Served deft. by serving a copy on John C. Haddock, President of Deft. Co. by handing to him a true and attested copy at his office No. 508 Second Nat. Bldg. Wilkes-Barre, Pa. after making known to him the contents thereof 21" Sept. 1909." and return sworn to by Joseph P. Flanagan.

Now 29th day of September 1909, by agreement of counsel for the above parties, the above injunction is continued and the hearing fixed for Wednesday, October 6, 1909.

BY THE COURT.

Now Oct. 6, 1909 by agreement of counsel for the deft. and plff. respectively in the above entitled case, the preliminary injunction is continued and the hearing set for Oct. 13, 1909.

BY THE COURT.

Now 13th day of October 1909, by agreement of counsel for plaintiff and defendant respectively, the injunction in the above entitled case is continued and the hearing set for Wednesday, Oct. 20, 1909.

BY THE COURT.

Now 20 Oct. 1909, by agreement of counsel for plaintiff and defendant respectively in the above stated suit, the injunction is continued and the hearing set for October 27th, 1909.

BY THE COURT.

Now 25 Oct. 1909, Defendant's answer filed.

Now 27 Oct. 1909, by agreement of counsel for plaintiff and defendant respectively, the within injunction is continued and the hearing set for Wednesday, November 3, 1909.

BY THE COURT.

Now 3 November 1909, by agreement of counsel for plaintiff and defendant, in above entitled case, the injunction is continued and the hearing set for 10th November 1909.

BY THE COURT.

Now 10 Nov. 1909, by agreement of counsel, for plaintiff and defendant, in above entitled case, the injunction is continued, and the hearing set for Wednesday 17 Nov. 1909.

BY THE COURT.

Now 17" November, by agreement of counsel for plaintiff and defendant in the above entitled suit, the injunction is continued and hearing set for Wednesday, Nov. 24, 1909.

BY THE COURT.

Now 24 Nov. 1909, by agreement of counsel for plaintiff and defendant in the above entitled suit the injunction is continued, and hearing set for Wednesday 1st December, 1909.

BY THE COURT

Now 1st Dec. 1909, by agreement of counsel for plaintiff and defendant in the above entitled suit, the injunction is continued and hearing set for Wednesday, December 7, 1909.

BY THE COURT.

Now 3 Dec. 1909, Plff's. Replication filed.

Now 8 Dec. 1909, By agreement of Counsel for Plff. and Deft. the injunction is continued and hearing set for Wednesday, Dec. 15, 1909.

BY THE COURT.

Now 15 Dec. 1909, by agreement of counsel for plff. and deft. the injunction is continued and hearing set for Wednesday, Dec. 22, 1909.

BY THE COURT.

3 Now 22 Dec. 1909, Plff's depositions filed.

Now 22 Dec. 1909, Defts. depositions filed.

Now 18 April 1910 sur bill answer replication and testimony filed.

Same day by opinion filed the prothonotary is directed to file of record in this cause the foregoing findings both of fact and law, and thereupon to enter the following decree Nisi and give notice to the parties or their counsel in accordance with rule 63 of equity practice.

By the Court: GEO. S. FERRIS, *J.*

Now 18 Apr. 1910 this cause having come on to be heard and having been argued by Counsel upon consideration thereof it is ordered, adjudged and decreed, (1) that the injunction heretofore granted be, and the same is hereby, continued until further order of the court without prejudice however, to the right of the defendant to apply to the Court for dissolution or modification thereof upon showing to the satisfaction of the court that the proper mine inspector and the engineers of the defendant Co. and the Lehigh & W. B. Coal Co. have, upon due investigation and consultation, determined that a barrier pillar of less width than that stated in the injunction (that is, less than seventy feet on defendant's property) is

sufficient for the protection of the men employed, in the mines of either company in case the mine of the other should be abandoned and allowed to fill with water, and have made duplicate surveys and filed copies of the same as required by law, or, upon such investigation and consultation, shall have decided that no such barrier pillar is necessary to the safety of the employees of either company in the event of aforesaid. 2. That the costs of this proceeding be paid by the defendant.

BY THE COURT.

Decree Nisi, returned "Served accepted 19 April 1910, by Atherton & Jones, Attys. for Plffs. and Wm. C. Price, Atty. for Deft.

Now 27 April 1910, Exception by Defendant filed and therewith copy for Plff.

Now 30 June 1910 this cause having come on to be heard and exceptions to the findings of the trial judge and to the decree nisi, having been argued by counsel before the Court, in banc upon consideration thereof it is ordered adjudged and decreed, First, that the injunction heretofore granted be, and the same is hereby continued until further order of the court, without prejudice, however to the right of the defendant to apply to the Court for dissolution or modification thereof, upon showing to the satisfaction of the Court, that the proper Mine Inspector and engineers of the defendant company and the Lehigh & Wilkes-Barre Coal Co. have upon due investigation and consultation, determined that a barrier pillar of less width than stated in the injunction (that is less than seventy feet on the defendant company's property) is sufficient for the protection of the men employed in the mines of either company in case the mine of the other should be abandoned and allowed to fill with water and have made duplicate surveys and filed copies of the same as required by law, or, upon such investigation and consultation, shall have decided that no such barrier pillar is necessary to the safety of the employees of either company in the event aforesaid. Second, that the costs of this proceeding shall be paid by the defendant, and thereupon judgment, J. D. 47.

BY THE COURT.

4 Now 8 July 1910, I hereby certify that the value of the coal property in controversy in the foregoing case tried before me is greater than fifteen hundred dollars ($1,500.00).

GEO. S. FERRIS, *Judge.*

Now 15 July 1910 Assignments of Error filed.

Now 15 July 1910, Bond of Plymouth Coal Company with Thos. P. Phillips as surety in the sum of $500.00 conditioned for prosecution of appeal in Appellate Court with effect etc. approved same day by John M. Bausch, Deputy Prothonotary, filed.

Now 15 July 1910 Writ of Certiorari from the Supreme Court, bearing teste 11 July 1910, returnable second Monday of April, 1911, and numbered in said Court to No. 222 January Term, 1910, received and filed.

Endorsed on Writ 15" July 1910, B. R. Jones, Atty. for Appellee accepts service of Writ and Appellee pleads, "In Nullo est erratum."

5 COMMONWEALTH OF PENNSYLVANIA,
County of Luzerne, ss:

[SEAL.]

I, T. M. Powell, Prothonotary of the Court of Common Pleas in and for said County, do hereby certify that the foregoing is a full, true and correct copy of the whole record of the case therein stated, wherein Commonwealth of Pennsylvania ex rel. David T. Davis, Inspector is Plaintiff, and The Plymouth Coal Company, is Defendant, so full and entire as the same remains of record before the said Court at No. 16 of October Term, A. D. 1909.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at Wilkes-Barre, this 5th day of April, A. D. 1911.

T. M. POWELL,
Prothonotary.

HARVEY.

6 In the Court of Common Pleas of Luzerne County, Sitting in Equity, — Term, 1909.

No. —.

COMMONWEALTH OF PENNSYLVANIA upon the Application of David T. Davis, Inspector of Mines of the Ninth District of the First Anthracite Coal Inspection District of Pennsylvania, Acting in Behalf of the said Commonwealth, Plaintiff,

VS.

THE PLYMOUTH COAL COMPANY, Defendant.

To the Honorable the Judges of said Court:

Your orator complains and says:

First. That he is the Mine Inspector of the 9th District of the First Anthracite Coal Inspection District of Pennsylvania, embracing as part of said district that portion of the Wyoming coal field lying in the Borough of Plymouth, Luzerne County, Penn'a.

Second. That as such inspector, it is part of his duty to see that every necessary precaution is taken to secure the safety of the workmen employed in the mines within his district and that the provisions of the Mine Law are observed and obeyed.

Third. That the within named defendant, The Plymouth Coal Company, and the Lehigh & Wilkes-Barre Coal Company, are corporations duly organized for the purpose of mining and pre-

7 paring Anthracite Coal for market, and their mines are situated within the limits of the said Anthracite Coal Inspection District aforesaid; and each company employess more than ten persons.

Fourth. That the said two coal companies are the owners, pro-

prietors, lessees and occupyers of adjoining coal properties in the Borough of Plymouth, Luzerne County, Pa., and within the limits of the said Anthracite Coal Inspection District.

Fifth. That as such owners of adjoining coal properties they are bound and obliged to observe the act of Assembly of June 2nd, 1891, P. L. 176, entitled, "An Act to provide for the health and safety of persons employed in and about the anthracite coal mines of Pennsylvania, and for the protection and preservation of property connected therewith," which provides inter alia, in Section 10, of Article 3, of said act, as follows: "It shall be obligatory on the owners of adjoining coal properties to leave, or cause to be left, a pillar of coal in each seam or vein of coal worked by them along the line of adjoining property, of such width that, taken in connection with the pillar to be left by the adjoining property owner, will be a sufficient barrier for the safety of employees of their mine, in case the other should be abandoned and allowed to fill with water, such width of pillar to be determined by the engineers of the adjoining property owners, together with the inspector of the district in which the mine is situated, and the survey of the face of the workings along such pillar shall be made in duplicate, and must practically agree, a copy of such duplicate survey, certified to, must be filed with the owners of the adjoining properties, and with the inspector of the district in which the mine or property is situated."

Sixth. That your orator, as inspector aforesaid, of the
8 district in which the mine of the Plymouth Coal Company is situated, notified the Plymouth Coal Company in writing of a meeting to be held at his office on Thursday, September 2nd, 1909, at 10 A. M., at which meeting the said Plymouth Coal Company was notified to be present with their engineer, to meet with your orator as inspector aforesaid, and the engineer of the Lehigh & Wilkes-Barre Coal Company, owners of adjoining property in Plymouth Borough, for the purpose of determining the width of the pillar to be left by the said two coal companies, as a barrier for the safety of the employees of their mines, in case the other should be abandoned and allowed to fill with water, as required by law, and set forth in paragraph 5 of plaintiff's Bill of Complaint; a copy of which notice is hereunto annexed and made a part of plaintiff's bill, and marked Exhibit "A".

Seventh. That notwithstanding the fact that your orator as inspector aforesaid, notified the said defendant company to meet, as set forth in paragraph 6, of plaintiff's Bill of Complaint, the defendant company refused to permit their engineer to meet with your orator as inspector, and the engineer of the Lehigh & Wilkes-Barre Coal Company, adjoining property owners, to determine the width of said barrier pillar, or to even consider the matter, but declined and refused to determine the width of said pillar by agreement, as required by law, and refuses to leave, or cause to be left a pillar that taken in connection with the pillar to be left by the adjoining property owners, to wit: The Lehigh & Wilkes-Barre Coal Company, will be a sufficient barrier for the safety of the employees of either mine, in case the other should be abandoned and allowed to fill with water;

and refuses to make surveys of the face of the workings along such pillar, and to certify and file the same with your orator, as inspector of the district in which the mine and property of the said
9 defendant company is situated; a copy of their refusal is hereunto attached and made part of plaintiff's Bill of Complaint, and marked Exhibit "B".

Eighth. That the defendant company employes in its mine at least three hundred persons; and the Lehigh & Wilkes-Barre Coal Company, the adjoining owner, employs in its mine, at least seven hundred persons; and the refusal of the defendant company to leave, or cause to be left, a pillar of coal in each seam or vein of coal worked by it along the line of the Lehigh & Wilkes-Barre Coal Company adjoining property owner, endangers the life and safety of the employees of both mines.

Your orator would, therefore, respectfully pray for relief as follows:

First. For an injunction, first preliminary, and afterwards upon final hearing, perpetual, against said defendant coal company, its agents, superintendents, servants and employees, restraining it, them or any of the-, from working its mine or coal property adjoining the mines or coal property of the Lehigh & Wilkes-Barre Coal Company in Plymouth Borough.

(*a*) Without leaving a pillar of coal of the thickness or width of at least thirty feet in each seam or vein of coal worked by them along the line of the Lehigh & Wilkes-Barre Coal Company, adjoining property owner, as a barrier pillar for the safety of the employees of either mine, in case the other should be abandoned and allowed to fill with water;

10 (*b*) In such a manner as to endanger the life and safety of the employees in their mine by refusing and neglecting to leave or cause to be left a barrier pillar for their safety.

Second. That the said defendant coal company be required to file with your orator as inspector of the district in which its mines or property is situated, a copy of the duplicate survey certified to, showing the width of said pillar, and the face of the workings along said pillar, as required by the aforesaid act of June 2nd, 1891, P. L. 176.

Third. Such other general relief as may seem proper to your Honors in the premises.

DAVID T. DAVIS,
Mine Inspector.

LUZERNE COUNTY, *ss:*

David T. Davis, the Mine Inspector of the Anthracite Coal District above named, being duly sworn, deposes and says that the facts set forth and contained in the foregoing bill are just and true, to his personal knowledge and belief.

DAVID T. DAVIS.

Sworn and subscribed to before me this 3rd day of September, A. D. 1909.

[SEAL.]

J. FRANK NUSS,
Notary Public.

My commission expires Jan. 27, 1913.

I hereby certify that we have not had sufficient time to print the within bill.

J. H. ATHERTON,
B. R. JONES,
Attys.

11 EXHIBIT "A."

WILKES-BARRE, PA., *Aug.* 31/09.

John C. Haddock, Pres. Plymouth Coal Co., Second National Bank Bldg., City.

DEAR SIR: Kindly have your engineer report at my office Thursday morning Sept. 2nd at 10 o'clock at which time we can meet the Engineer of the Lehigh & Wilkes-Barre Coal Company to decide as to thickness of barrier pillar to be left unmined between the properties of the Lehigh & Wilkes-Barre Coal Company and the Plymouth Coal Company, situated at Plymouth, Luz. Co., Pa., as per Article 3, Section 10 Anthracite Mine Laws of this Commonwealth, which reads as follows: "It shall be obligatory on the owners of adjoining coal properties to leave, or cause to be left, a pillar of coal in each seam or vein of coal worked by them, along the line of adjoining property, of such width, that taken in connection with the pillar to be left by the adjoining property owner, will be a sufficient barrier for the safety of the employees of either mine in case the other should be abandoned and allowed to fill with water; such width of pillar to be determined by the engineers of the adjoining property owners together with the inspector of the district in which the mine is situated, and the surveys of the face of the workings along such pillar shall be made in duplicate and must practically agree. A copy of such duplicate surveys, certified to, must be filed with the owners of the adjoining properties and with the inspector of the district in which the mine or property is situated."

Yours very truly,
(Signed) D. T. DAVIS,
Inspector of Mines.

12 EXHIBIT "B."

WILKES-BARRE, PA., *Sept.* 1, 1909.

Mr. D. T. Davis, Inspector, Ninth Anthracite Inspection District. Wilkes-Barre, Pa.

DEAR SIR: I am in receipt of yours of the 31st ult.

Allow me to say in reply that while it would give us great pleasure to meet you and the representatives of the Lehigh & Wilkes-Barre Coal Company at the suggested conference, to be held to-morrow, we cannot enter such a conference to even consider, much less concluded as agreement that may effect our rights and our duty to our lessors at the Dodson Colliery.

I assume it is needless to assure you that we stand ready at all times to comply with any reasonable request that may emanate from

you or your office, but if I am advised correctly, this request or demand originated with the Lehigh & Wilkes-Barre Coal Company. This was their right to make as it is ours to decline.

Yours very truly,

(Signed) JOHN C. HADDOCK,
President The Plymouth Coal Co.

13 Endorsement: In Equity—No. 16 Oct. T. '09—Com. of Pa. et al., Plff. v. The Plymouth Coal Co., Deft.—Bill of Complaint.—Now 4th day Sept. 1909, upon filing within Bill and motion of counsel for Plaintiff a preliminary injunction is awarded as within prayed for upon giving surety to be approved by the court in sum of one thousand dollars, ret. Wednesday Sept. 8th, 1909, at 10 A. M. Geo. S. Ferris, Judge—Filed 3 Sept. 1909,—$3.00—Atherton & Jones, Attys.

14 LUZERNE COUNTY, *ss:*

No. —.

In Equity. Oct. Term, 1909.

COMMONWEALTH OF PENNSYLVANIA et al.
VS.
THE PLYMOUTH COAL COMPANY.

Injunction Affidavit.

Personally appeared before me, David T. Davis, who being duly sworn, doth depose and say:

That he is the Mine Inspector of the said District of the First Anthracite Coal Inspection District of Pennsylvania; embracing as part of said district, that portion of the Wyoming Coal field lying in the Borough of Plymouth.

That the Plymouth Coal Company and the Lehigh & Wilkes-Barre Coal Company, are the owners, proprietors, lessees and occupyers of adjoining coal properties in the said Borough of Plymouth, and as such owners, they are bound and obliged to observe the act of Assembly of June 2nd, 1891, P. L. 176, which makes it obligatory on the owners of adjoining coal properties to leave or cause to be left, a pillar of coal in each seam or vein or coal worked by them along the line of adjoining property, as a barrier for the safety of the employees of either mine.

That the said Plymouth Coal Company was notified to have their Engineer meet the Engineer of the Lehigh & Wilkes-Barre Coal Company, and the inspector, for the purpose of fixing the width of the said pillar, as required by law.

That the said Plymouth Coal Company refused to meet the Mine Inspector, and the Engineer, and the Lehigh & Wilkes-Barre Coal Company, and refused to determine the width of said pillar, or to

even consider the matter, and is mining and about to mine
15 the pillar now standing between the said properties, in violation of law, and refuses to make surveys of the face of the workings along such pillar and to certify and file the same with the Inspector of the district, and continues to work toward the adjoining property owner's line, to the danger of the health and safety of the employees of either mine.

DAVID T. DAVIS.

Sworn and subscribed to before me this 3d day of September, A. D. 1909. My commission expires Jan. 27, 1913.

[SEAL.] J. FRANK NUSS,
Notary Public.

Endorsement: In Equity—No. 16 Oct. T. '09—Com. of Pa., Plff. v. The Plymouth Coal Co.—Inj. Aff.—Filed 3 Sept. 1909.

16 LUZERNE COUNTY, *ss:*

In Equity. Oct. Term, 1909.

No. —.

COMMONWEALTH OF PENNSYLVANIA et al.
vs.
THE PLYMOUTH COAL COMPANY.

Injunction Affidavit.

Personally appeared before me, Douglass Bunting, who being duly sworn, doth depose and say:

That he is the Chief Engineer for the Lehigh & Wilkes-Barre Coal Company.

That the Plymouth Coal Company and the Lehigh & Wilkes-Barre Coal Company, are the owners, proprietors, lessees and occupyers of adjoining coal properties in the said Borough of Plymouth, and as such owners, they are bound and obliged to observe the act of Assembly of June 2nd, 1891, P. L. 176, which makes it obligatory on the owners of adjoining coal properties to leave or cause to be left, a pillar of coal in each seam or vein or coal worked by them along the line of adjoining property, as a barrier for the safety of the employees of either mine.

That the said Plymouth Coal Company was notified to have their Engineer meet the Engineer of the Lehigh & Wilkes-Barre Coal Company, and the inspector, for the purpose of fixing the width of the said pillar, as required by Law.

That the said Plymouth Coal Company refused to meet the Mine Inspector, and the Engineer, and the Lehigh & Wilkes-Barre Coal Company, and refused to determine the width of said pillar, or to even consider the matter, and is mining and about to mine the pillar now standing between the said properties, in violation
17 of law, and refuses to make surveys of the face of the workings along such pillar and to certify and file the same with

the Inspector of the district, and continues to work toward the adjoining property owner's line, to the danger of the health and safety of the employees of either mine.

DOUGLAS BUNTING.

Sworn and subscribed to before me this 3d day of September, A. D. 1909. My commission expires Jan. 27, 1913.

[SEAL.] J. FRANK NUSS,
Notary Public.

Endorsement: In Equity.—No. 16 Oct. T. '09—Com. of Pa. Plff. vs. Plymouth Coal Co., Deft.—Inj. Affidavit.—Filed 3 Sept. 1909.

18 Know all men by these presents that we David T. Davis and The Title Guaranty & Surety Company of Scranton, Pa. and B. R. are held and firmly bound unto The Plymouth Coal Company its successors or assigns, in the sum of One thousand Dollars, lawful money, for the payment of which sum, well and truly to be made, we do bind ourselves, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents; and we do hereby confess judgment for the above sum, without stay of execution or appeal, waiving the right of exemption and appraisement, and the right of inquisition on real estate, with five per cent. added as Attorney's commission for collection. Sealed with out seals and dated this fifth day of September, A. D. One Thousand Nine Hundred and nine.

The condition of this obligation is such whereas David T. Davis as Mine Inspector of the 9th Dist. of the First Anthracite Coal Inspection Dist. of Penna. has applied to the Court of Common Pleas of Luzerne County, Sitting in Equity, for a preliminary injunction to restrain the said coal company, from mining a barrier pillar between its mine and the mine of the Lehigh & Wilkes-Barre Coal Company, in Plymouth Borough, which injunction was awarded upon giving security in the sum of One Thousand Dollars ($1000.00).

Now, the condition of this obligation is such, that if the said David T. Davis as Mine Inspector, shall well and truly indemnify the said Plymouth Coal Company for all damages that may be sustained by reason of such injunction, then this obligation to be null and void. Otherwise to be and remain in full force and effect.

19 D. T. DAVIS. [SEAL.]
THE TITLE GUARANTY & SURETY CO.
OF SCRANTON, PA.,
By JOHN M. JONES, *Attorney in Fact.*

In the presence of
B. R. JONES.

Endorsement: In Equity.—No. 16 Oct. Term, 1909 Bond—Com. of Penna. et al. vs. The Plymouth Coal Co.—Now 4th day Sept. A. D. 1909 the within bond and sureties are approved. By the Court, Geo. S. Ferris, Judge.—Filed 4 Sept. 1909.

20*a* SHERIFF'S OFFICE, LUZERNE COUNTY.

To the Honorable the Judge within named:

I hereby certify and return that on the 4th day of September, 1909, at 1.10 P. M. I served the within Preliminary Injuncton on the within named defendant, The Plymouth Coal Company, by handing to Thomas R. Phillips, Treasurer of The Plymouth Coal Company, a true and attested copy of the within Preliminary Injunction and making known to him the contents thereof.

So answers,

FRED. RODDA, *Sheriff.*
Per THOMAS RODDA, *Deputy.*

Sworn and subscribed before me this 13th day of September A. D. 1909.

HENRY WALSER, *Proth'y,*
Per W.

20 *Injunction.*

LUZERNE COUNTY, *ss:*

[SEAL.]

The Commonwealth of Pennsylvania to The Plymouth Coal Company, its agents, workmen, laborers, and servants, Greeting:

Whereas, it has been represented to us in our Court of Common Pleas sitting in equity for the county of Luzerne aforesaid, in a certain cause there depending, wherein Commonwealth of Pennsylvania, upon the application of David T. Davis, Inspector of Mines of the Ninth District of the First Anthracite Coal Inspection District of Pennsylvania, acting in behalf of the said Commonwealth is complainant, and you The Plymouth Coal Company are defendant on the part of the said complainant, that he lately exhibited his bill of complaint in our said Court of Common Pleas, sitting in Equity, against you, the said The Plymouth Coal Company praying to be relieved touching the matter therein contained and that thereupon, upon motion for Injunction and hearing thereof, and upon said complainant filing a bond in the penal sum of One Thousand ($1,000.00) dollars, with surety approved by the Court, as required by the Acts of Assembly in such case made and provided, it was ordered that a preliminary Injunction issue pursuant to the prayer of the said bill to restrain you, the said defendant, until further order as hereinafter set forth. We, therefore, in consideration of the premises aforesaid, do strictly command and enjoin you, the said The Plymouth Coal Company, your agents, workmen, laborers and servants, and all and every one of you, that you do from henceforth altogether absolutely desist from working its mine or coal property adjoining the mines or coal property of the Lehigh and Wilkes-Barre Coal Company in Plymouth Borough, without leaving a pillar of coal of the thickness or width of at least seventy (70) feet in each seam or vein of coal worked by them along the
21 line of the Lehigh and Wilkes-Barre Coal Company adjoining property owner as a barrier pillar for the safety of the em-

ployees of either mine, in case the other should be abandoned or allowed to fill with water. And that you absolutely desist from working your mine or coal property adjoining the mines or coal property of The Lehigh and Wilkes-Barre Coal Company in Plymouth Borough in such manner as to endanger the life and safety of the employees in their mine by refusing and neglecting to leave or cause to be left a barrier pillar for their safety, until our said Court make other order to the contrary.

Witness the Hon. John Lynch, President Judge of said Court at Wilkes-Barre, this 4th day of September in the year of our Lord one thousand nine hundred and nine.

HENRY WALSER,
Prothonotary,
Per BAUSCH.

Endorsement: (In Equity) No. 16 October Term, 1909.—Commonwealth of Pennsylvania ex rel. vs. The Plymouth Coal Company—Preliminary Injunction—Hearing on Motion to Continue preliminary Injunction fixed for Wednesday September 8th., 1909 at 10:00 A. M.—3.40 Paid by Atherton, Fred Rodda, Sheriff—Atherton and Jones, Attorneys. Served 1:10 P. M.—Service accepted for The Plymouth Coal Co., Thos. R. Phillips, For Deft., Kingston, Pa., Sept. 4, 1909. T. R.

22 LUZERNE COUNTY, *ss:*

In the Court of Common Pleas of Luzerne County, Sitting in Equity, Oct. Term, 1909.

No. 16.

COMMONWEALTH OF PENNSYLVANIA et. al., Plaintiff,
vs.
THE PLYMOUTH COAL COMPANY, Defendant.

Now, 4th day of September, A. D. 1909, upon motion of Counsel for plaintiff, the prayer (*a*) for a preliminary injunction in the above case is amended, so as to enjoin the defendant company from working its mine or coal property, adjoining the mines or coal property of the Lehigh & Wilkes-Barre Coal Company, in the Borough of Plymouth, without leaving a pillar of coal of the thickness or width of at least seventy feet (70) in each seam or vein of coal worked by them along the line of the Lehigh & Wilkes-Barre Coal Company adjoining property owner, as a barrier pillar for the safety of the employees of either mine, in case the other should be abandoned and allowed to fill with water.

GEO. S. FERRIS, *Judge.*

Endorsement: In Equity—No. 16 Oct. T. '09—Com. of Pa. vs. The Plymouth Coal Co.—Amendment—Filed 4 Sept. 1909.

23 LUZERNE COUNTY, *ss:*

Sitting in Equity, Oct. Term, 1909.

No. 16.

COMMONWEALTH OF PENN. *et al.*
vs.
THE PLYMOUTH COAL COMPANY.

Now 8th day of Sept. 1909 by agreement of Counsel for the plaintiff and defendant the preliminary injunction awarded in the above case and returnable this day is continued until Wednesday, Sept. 15th, 1909 at 10 A. M.

BY THE COURT.

Endorsement: No. 16 Oct. Term 1909—In Equity—Commonwealth of Penna. et al. vs. Plymouth Coal Co.—Filed 8th Sept. 1909.

24 In the Court of Common Pleas of Luzerne County, Sitting in Equity, October Term, 1909.

No. 16.

COMMONWEALTH OF PENNSYLVANIA ex Rel. DAVID T. DAVIS, Inspector, **Plaintiff,**
vs.
THE PLYMOUTH COAL COMPANY, Defendant.

Now, the 15th day of September, A. D., 1909, by agreement of counsel for the above parties, plaintiff and defendant, the injunction granted on September 4th, 1909 is continued and the hearing in the above case is set for Wednesday, September 22, 1909.

BY THE COURT.

Endorsement: No. 16 Oct. Term 1909—Commonwealth of Pennsylvania ex Rel. David T. Davis v. The Plymouth Coal Company—Motion to Continue—Filed Sept. 15, 1909—B. R. Jones, Solicitor for Plff.

25 In the Court of Common Pleas of Luzerne Co., Sitting in Equity, Oct. T., 1909.

No. 16.

JOHANNA BRENNAN, Plaintiff,

vs.

PLYMOUTH TOWNSHIP and MARTIN CURLEY et al.

Motion for Continuance.

Now Sept. 16, 1909, on motion of the plaintiff, the preliminary injunction and hearing set for Saturday, Sept. 18, 1909, is continued to be heard on Friday September 24, 1909, at 10 o'clock, A. M.

BY THE COURT.

Endorsement: No. 16 Oct. T. 1909—Johanna Brennan Plaintiff vs. Plymouth Township and Martin Curley et al. defendant—In Equity—Preliminary Injunction—Motion for Continuance—Filed 16 Sept. 1909.

26 In the Court of Common Pleas of Luzerne County, Sitting in Equity, Oct. Term, 1909.

No. 16.

COMMONWEALTH OF PENNSYLVANIA upon the Application of David Davis, Inspector of Mines of the Ninth District of the First Anthracite Coal Inspection District of Pennsylvania, Acting in Behalf of the said Commonwealth, Plaintiff,

vs.

THE PLYMOUTH COAL COMPANY, Defendant.

To the Honorable the Judges of said Court:

Your orator complains and says:

First. That he is the mine inspector of the 9th District of the First Anthracite Coal Inspection District of Pennsylvania, embracing as part of said district that portion of the Wyoming coal field lying in the borough of Plymouth, Luzerne County, Penna.

Second. That as such inspector, it is part of his duty to see that every necessary precaution is taken to secure the safety of the workmen employed in the mines within his district and that the provisions of the Mine Law are observed and obeyed.

27 Third. That the within named defendant, The Plymouth Coal Company, and the Lehigh & Wilkes-Barre Coal Company, are corporations duly organized for the purpose of mining and preparing anthracite coal for market, and their mines are situated in the limits of the said Anthracite Coal Inspection District aforesaid; and each company employs more than ten persons.

Fourth. That the said two coal companies are the owners, proprietors, lessees and occupyers of adjoining coal properties in the borough of Plymouth, Luzerne County, Pa., and within the limits of the said Anthracite Coal Inspection District.

Fifth. That as such owners of adjoining coal properties they are bound and obliged to observe the act of Assembly of June 2nd, 1891, P. L. 176, entitled, "An act to provide for the health and safety of persons employed in and about the anthracite coal mines of Pennsylvania, and for the protection and preservation of property connected therewith," which provides inter alia, in Section 10, of Article 3, of said act, as follows: "It shall be obligatory on the owners of adjoining coal properties to leave, or cause to be left, a pillar of coal in each seam or vein of coal worked by them along the line of adjoining property, of such width that, taken in connection with the pillar to be left by the adjoining property owner, will be a sufficient barrier for the safety of the employees of either mine, in case the other should be abandoned and allowed to fill with water, such width of pillar to be determined by the engineers of the adjoining property owners, together with the inspector of the district in which the mine is situated, and the surveys of the face of the workings along such pillar shall be made in duplicate, and must practically agree. A copy of such duplicate survey, certified to, must be filed with the owners of the adjoining properties, and with the inspector of the district in which the mine or property is situated.

28 Sixth. That your orator, as inspector aforesaid, of the district in which the mine of the Plymouth Coal Company is situated, notified the Plymouth Coal Company in writing of a meeting to be held at his office on Thursday, September 2nd, 1909, at 10 a. m., at which meeting the said Plymouth Coal Company was notified to be present with their engineer, to meet with your orator, as inspector aforesaid, and the engineer of the Lehigh & Wilkes-Barre Coal Company, owners of adjoining property in Plymouth borough, for the purpose of determining the width of the pillar to be left by the said two coal companies, as a barrier for the safety of the employees of their mines, in case the other should be abandoned and allowed to fill with water, as required by law, and set forth in paragraph 5 of plaintiff's Bill of Complaint; a copy of which notice is hereunto annexed and made a part of plaintiff's bill, and marked Exhibit "A."

Seventh. That notwithstanding the fact that your orator, as inspector aforesaid, notified the said defendant company to meet, as set forth in paragraph 6, of plaintiff's Bill of Complaint, the defendant company refused to permit their engineer to meet with your orator, as inspector, and the engineer of the Lehigh & Wilkes-Barre Coal Company, adjoining property owners, to determine the width of said barrier pillar, or to even consider the matter, but declined and refused to determine the width of said pillar by agreement, as required by law, and refuses to leave, or cause to be left a pillar that taken in connection with the pillar to be left by the adjoining property owners, to-wit: The Lehigh & Wilkes-Barre Coal Company, will be a sufficient barrier for the safety of the employees of either mine,

in case the other should be abandoned and allowed to fill with water; and refuses to make surveys of the face of the workings along such pillar, and to certify and file the same with your orator, as inspector of the district in which the mine and property of the said defendant company is situated; a copy of their refusal is hereunto at-
29 tached and made part of plaintiff's Bill of Complaint, and marked Exhibit "B."

Eighth. That the defendant company employs in its mine at least three hundred persons; and the Lehigh & Wilkes-Barre Coal Company, the adjoining owner, employs in its mine, at least seven hundred persons; and the refusal of the defendant company to leave, or cause to be left, a pillar of coal in each seam or vein of coal worked by it along the line of the Lehigh & Wilkes-Barre Coal Company, adjoining property owners, endangers the life and safety of the employees of both mines.

Your orator would, therefore, respectfully pray for relief as follows:

First. For an injunction, first preliminary, and afterwards upon final hearing, perpetual, against said defendant coal company, its agents, superintendents, servants and employees, restraining it, them or any of them, from working its mine or coal property adjoining the mines of coal property of the Lehigh & Wilkes-Barre Coal Company, in the borough of Plymouth.

(*a*) Without leaving a pillar of coal of the thickness or width of at least 30 feet in each seam or vein of coal worked by them along the line of the Lehigh & Wilkes-Barre Coal Company, adjoining property owner, as a barrier pillar for the safety of the employees of either mine, in case the other should be abandoned and allowed to fill with water.

(*b*) In such a manner as to endanger the life and safety of the employees in their mine by refusing and neglecting to leave or cause to be left a barrier pillar for their safety.

30 Second. That the said defendant coal company be required to file with your orator as inspector of the district in which its mines or property *is* situated, a copy of such duplicate survey certified to, showing the width of said pillar, and the face of the workings along said pillar, as required by the aforesaid act of June 2nd, 1891, P. L. 176.

Third. Such other general relief as may seem proper to your Honors in the premises.

DAVID. T. DAVIS.

LUZERNE COUNTY, *ss*:

David T. Davis, the Mine Inspector of the Anthracite Coal District above named, being duly sworn, deposes and says that the facts set forth and contained in the foregoing bill are just and true, to his personal knowledge and belief.

DAVID. T. DAVIS.

Sworn and subscribed to before me this 20 day of September, A. D. 1909.
My com. expires Apr. 18, 1911.
[SEAL.]

MARY E. DEAN,
Notary Public.

Certified from the records this 21st day of September A. D. 1909.

HENRY WALSH,
Prothonotary,
Per KIRKENDALL,
Deputy Prot.

31 EXHIBIT "A."

AUG. 31ST, 1909.

John C. Haddock, Pres., Plymouth Coal Co., Second National Bank Bldg., City.

DEAR SIR: Kindly have your Engineer report at my office Thursday morning, Sept. 2nd, at 10 o'clock, at which time we can meet the Engineer of the Lehigh & Wilkes-Barre Coal Company to decide as to thickness of barrier pillar to be left unmined between the properties of the Lehigh & Wilkes-Barre Coal Company and the Plymouth Coal Company, situated at Plymouth, Luz. Co., Pa., as per Article 3, Section 10, Anthracite Mine Laws of this Commonwealth, which reads as follows: "It shall be obligatory on the owners of adjoining coal properties to leave, or cause to be left, a pillar of coal in each seam or vein of coal worked by them, along the line of adjoining property, of such width, that taken in connection with the pillar to be left by the adjoining property owner, will be a sufficient barrier for the safety of the employees of either mine in case the other should be abandoned and allowed to fill with water; such width of pillar to be determined by the engineers of the adjoining property owners together with the inspectors of the district in which the mine is situated, and the surveys of the face of the workings along such pillar shall be made in duplicate and must practically agree. A copy of such duplicate surveys, certified to, must be filed with the owners of the adjoining properties and with the inspector of the district in which the mine or property is situated."

Yours very truly,
(Signed)
[SEAL.]

D. T. DAVIS,
Inspector of Mines.

32 EXHIBIT "B."

SEPTEMBER 1st, 1909.

Mr. D. T Davis, Inspector Ninth Anthracite Inspection District, Wilkes-Barre, Pa.

DEAR SIR: I am in receipt of yours of the 31st ult.

Allow me to say in reply that while it would give us great pleasure to meet you and the representative of the Lehigh & Wilkes-Barre Coal Company at the suggested conference, to be held to-morrow,

we cannot enter such conference to even consider, much less conclude an agreement that may affect our rights and our duty to our lessors at the Dodson Colliery.

I assume it is needless to assure you that we stand ready at all times to comply with any reasonable request that may emanate from you or your office, but if I am advised correctly, this request or demand originated with the Lehigh & Wilkes-Barre Coal Company. This was their right to make as it is ours to decline.

Yours very truly,

(Signed) JOHN C. HADDOCK,
President The Plymouth Coal Co.

33 *Amendment.*

In the Court of Common Pleas of Luzerne County, Sitting in Equity, Oct. Term, 1909.

No. 16.

COMMONWEALTH OF PENNSYLVANIA et al., Plaintiff-,
vs.
THE PLYMOUTH COAL COMPANY, Defendant.

LUZERNE COUNTY, *ss:*

Now, 4th day of September, A. D. 1909, upon motion of counsel for plaintiff, the prayer (*a*) for a preliminary injunction in the above case is amended, so as to enjoin the defendant company from working its mine or coal property, adjoining the mines or coal property of the Lehigh & Wilkes-Barre Coal Company, in the borough of Plymouth, without leaving a pillar of coal of the thickness or width of at least seventy feet (70) in each seam or vein of coal worked by them along the line of the Lehigh & Wilkes-Barre Coal Company, adjoining property owner, as a barrier pillar for the safety of the employees of either mine, in case the other should be abandoned and allowed to fill with water.

BY THE COURT.

34 LUZERNE COUNTY, *ss:*

[SEAL.]

Joseph P. Flanigan being duly sworn, deposes and says that he served the within Bill on the within defendant, by serving a copy on John C. Haddock, President of the Defendant Company, by handing to him a true and attes-ed copy hereof, at his office No. 508 Second National Bank Building, in the City of Wilkes-Barre, on the 21st day of September, 1909, after making known to him the contents thereof.

JOSEPH P. FLANAGAN.

Sworn and subscribed before me this 21st day of Sept. 1909.
My Com. Exp. Apr. 18, 1911.

MARY E. DEAN,
Notary Public.

Endorsement: In the Court of Common Pleas of Luzerne County, Pa.—In Equity—No. 16, October Term, 1909—Commonwealth of Pennsylvania, upon the application of David T. Davis, Inspector of Mines of the Ninth District of the First Anthracite Coal Inspection District of Pennsylvania, acting in behalf of the said Commonwealth, Plaintiff, vs. The Plymouth Coal Company, Defendant—Bill in Equity—Filed 21 Sept. 1909—To the within named Defendant, the Plymouth Coal Company: You are hereby notified and required, within fifteen days after service hereof on you, to cause an appearance to be entered for you in the Court of Common Pleas of Luzerne County, Pa., sitting in equity, and to file your answer within thirty days, to the within Bill of Complaint of the within named plaintiff and observe what the said Court shall direct. You are also notified that if you fail to comply with the above directions, by not entering an appearance in the Prothonotary's Office within fifteen days, or by not filing your answer within thirty days, you will be liable to have the bill taken pro confesso, and a decree made against you in your absence. Witness our hands at Wilkes-Barre, Pa., this — day of September, A. D. 1909. Thos. H. Atherton, Benj. R. Jones, Solicitors for Plaintiff.

35 LUZERNE COUNTY, ss:

In Common Pleas, in Equity, Oct. T., 1909.

No. 16.

COM. OF PENNA. et al.
v.
THE PLYMOUTH COAL CO.

Now 22d day Sept. 1909 by agreement of counsel the preliminary injunction heretofore granted in the above case is continued until Wednesday Sept. 29th 1909 @ 10 A. M.

BY THE COURT.

Endorsement: No. 16 Oct. T., 1909—In Equity—Com. of Pa. vs. The Plymouth Coal Co.—Motion to Cont. Inj.—Filed 22 Sept., 1909—Atherton & Jones.

36 In the Court of Common Pleas of Luzerne County, in Equity, October Term, 1909.

No. 16.

COMM. OF PENNA. upon Application of DAVID T. DAVIS, Inspector, etc.,
vs.
THE PLYMOUTH COAL CO.

Enter our appearance for defendant in above case.

F. W. WHEATON.
WM. C. PRICE.

To Henry Walser, Esq., Prothonotary.

Sept. 22/09.

4—102

Endorsement: In Equity.—No. 16 October term, 1909—Comm. of Penna., etc., vs. The Plymouth Coal Company, D'f't. Appearance—Filed 22 Sept., 1909—F. W. Wheaton, Wm. C. Price, Att'ys for D'f't.

37 In the Court of Common Pleas of Luzerne County, in Equity, October Term, 1909.

No. 16.

COMMONWEALTH OF PENNSYLVANIA upon the Application of DAVID T. DAVIS, Inspector of Mines,

vs.

THE PLYMOUTH COAL COMPANY.

Now, 29th day of September, 1909, by agreement of counsel for the above parties, the above injunction is continued and the hearing fixed for Wednesday, October 6th, 1909.

BY THE COURT.

Endorsement: No. 16 Oct. Term, 1909—In Equity—Commonwealth of Pennsylvania ex Rel. David T. Davis, v. Plymouth Coal Co.—Filed 1 Oct., 1909—Atherton & Jones, Att'y- for Pl'ffs.

38 In the Court of Common Pleas of said County, Sitting in Equity, October Term, 1909.

#16.

COMMONWEALTH OF PENNSYLVANIA ex Rel. DAVID T. DAVIS, Inspector,

vs.

PLYMOUTH COAL COMPANY.

Now, October 6th, 1909, by agreement of counsel for the Plaintiff and defendant respectively, in the above entitled case, the preliminary injunction is continued, and the hearing set for October 13, 1909.

BY THE COURT.

Endorsement: No. 16 Oct. Term, 1909—In Equity—Commonwealth of Pennsylvania ex Rel. David T. Davis v. The Plymouth Coal Co.—Order to Continue Injunction—Filed Oct. 7, 1909.

39 In the Court of Common Pleas of Luzerne County, Pa., Sitting in Equity, October Term, 1909.

#16.

COMMONWEALTH OF PENNSYLVANIA upon the Application of David T. Davis, Inspector of Mines of the Ninth District of the First Anthracite Coal Inspection District of Pennsylvania, Acting in Behalf of the said Commonwealth,

VS.

THE PLYMOUTH COAL COMPANY.

Now, 13th day of October, 1909, by agreement of counsel, for plaintiff and defendant respectively, the injunction in the above entitled case is continued and the hearing set for Wednesday, October 20th, 1909.

BY THE COURT.

Endorsement: No. 16 Oct. Term, 1909—In Equity—Commonwealth of Pennsylvania v. The Plymouth Coal Co.—Agreement to Continue Injunction—Filed 13 Oct., 1909.

40 In the Court of Common Pleas of Luzerne County, in Equity, October Term, 1909.

No. 16.

COMMONWEALTH OF PENNSYLVANIA upon the Application of David T. Davis, Inspector of Mines of the Ninth District of the First Anthracite Coal Inspection District of Pennsylvania, Acting in Behalf of the said Commonwealth,

VS.

THE PLYMOUTH COAL COMPANY.

Now, October 20th, 1909, by agreement of counsel for plaintiff and defendant respectively in the above stated suit, the injunction is continued and the hearing set for October 27th, 1909.

BY THE COURT.

Endorsement: No. 16 Oct. Term, 1909—In Equity—Commonwealth of Pennsylvania v. The Plymouth Coal Co.—Agreement to Continue Injunction—Filed 20 Oct., 1909.

41 In the Court of Common Pleas of Luzerne County, Sitting in Equity, October Term, 1909.

No. 16.

COMMONWEALTH OF PENNSYLVANIA upon the application of David Davis, Inspector of Mines of the Ninth District of the First Anthracite Coal Inspection District of Pennsylvania, Acting in Behalf of the said Commonwealth, Plaintiff,

VS.

THE PLYMOUTH COAL COMPANY, Defendant.

Answer of the Defendant.

To the Honorable the Judges of said Court:

The Plymouth Coal Company, defendant above named, by her president, John C. Haddock, saving and reserving to herself all and all manner of exceptions and objections to the manifold errors in said bill of complaint contained, for answer thereto or to such parts thereof as she is advised is material and necessary for her to answer, says:

First. I admit the truth of the averments contained in the first, second, third and fourth paragraphs of the complainants' bill.

Second. I admit the averments contained in fifth paragraph of the complainants' bill, and for further answer aver that the Act of June 2, 1891, P. L. 176, referred to in said paragraph is confiscatory, unconstitutional and void.

Third. I admit the averments as contained in the sixth paragraph of complainants' bill.

Fourth. I admit the averments contained in the seventh paragraph of complainants' bill, with the qualification that I deny that any barrier is necessary for the safety of the employees of either mine in case the other mine should be abandoned.

42 Fifth. I admit the averments contained in the eighth paragraph of complainants' bill, with the qualification that I deny that my refusal to leave or cause to be left a pillar of coal in each seam or vein of coal worked by me along the line of the Lehigh & Wilkes-Barre Coal Company, adjoining property owner, endangers the life and safety of the employees of both mines.

All of which matters and things this defendant is ready and willing to maintain and prove as this honorable court may direct, and humbly prays that the bill may be dismissed with her reasonable costs and charges in this behalf most wrongfully sustained.

THE PLYMOUTH COAL COMPANY,
JOHN C. HADDOCK, *President.*

LUZERNE COUNTY, *ss:*

Before me, a Notary Public in and for the State of Pennsylvania, residing in the City of Wilkes-Barre, personally appeared John C. Haddock, who being duly sworn according*ly* to law says that he

is president of the Plymouth Coal Company, the defendant above-named, and that the statements made in the foregoing answer to plaintiff's bill so far as founded upon his own knowledge are true and so far as founded upon the information of others he believes them to be true.

——— ———.

Sworn and subscribed to before me this 25th day of October, A. D. 1909.

G. W. REYNOLDS, [SEAL.]
Notary Public.

My commission expires March 11, 1913.

43 Endorsement: In Equity—In the Court of Common Pleas of Luzerne County—No. 16. October Term, 1909.—Commonwealth of Pennsylvania, upon the application of David T. Davis, Inspector of Mines of the Ninth District of the First Anthracite Coal Inspection District of Pennsylvania, acting in behalf of the said Commonwealth, Plaintiff, vs. The Plymouth Coal Company, Defendant—Defendant's Answer to Plaintiff's Bill of Complaint—Filed 25 October, 1909—John T. Lenahan, F. W. Wheaton, William C. Price, Solicitors for Defendant.

44 In the Court of Common Pleas of Luzerne County, Pa., October Term, 1909.

#16.

COMMONWEALTH OF PENNSYLVANIA upon the Application of David T. Davis, Inspector of Mines of the Ninth District of the First Anthracite Coal Inspection District of Pennsylvania, Acting in Behalf of the said Commonwealth,

vs.

THE PLYMOUTH COAL COMPANY.

Now, October 27th, 1909, by agreement of counsel for plaintiff and defendant respectively, the within injunction is continued and hearing set for Wednesday, November 3rd, 1909.

BY THE COURT.

Endorsement: No. 16 Oct. Term, 1909—In Equity—Commonwealth of Pennsylvania v. The Plymouth Coal Co.—Agreement to Continue Injunction—Filed 27 Oct., 1909.

45 In the Court of Common Pleas of Luzerne County, in Equity, October Term, 1909.

#16.

COMMONWEALTH OF PENNSYLVANIA upon the Application of David T. Davis, Inspector of Mines of the Ninth District of the First Anthracite Coal Inspection District of Pennsylvania, Acting in Behalf of the said Commonwealth,

vs.

THE PLYMOUTH COAL COMPANY.

Now, 3" day of November, 1909, by agreement of counsel, for plaintiff and defendant, in above entitled case, the injunction is continued and the hearing set for 10" day of November, 1909.

BY THE COURT.

Endorsement: In Equity—No. 16 Oct. Term, 1909—Commonwealth of Pennsylvania v. The Plymouth Coal Co.—Agreement to Continue Injunction—Filed 4 Nov., 1909.

46 In the Court of Common Pleas of Luzerne County, in Equity, October Term, 1909.

#16.

COMMONWEALTH OF PENNSYLVANIA upon the Application of David T. Davis, Inspector of Mines of the Ninth District of the First Anthracite Coal Inspection District of Pennsylvania, Acting in Behalf of the said Commonwealth,

vs.

THE PLYMOUTH COAL COMPANY.

Now, 10th day of November, 1909, by agreement of counsel, for plaintiff and defendant, in above entitled case, the injunction is continued and the hearing set for Wednesday 17th day of November, 1909.

BY THE COURT.

Endorsement: In Equity.—No. 16 Oct. Term, 1909—The Commonwealth of Pennsylvania v. The Plymouth Coal Co.—Agreement to Continue Injunction—Filed Nov. 10th, 1909.

47 In the Court of Common Pleas of Luzerne County, October Term, 1909.

No. 16.

COMMONWEALTH OF PENNSYLVANIA upon the Application of David T. Davis, Inspector of Mines of the Ninth District of the First Anthracite Coal Inspection District of Pennsylvania, Acting in Behalf of the said Commonwealth,

vs.

PLYMOUTH COAL COMPANY.

Now, 17" day of November, by agreement of counsel for plaintiff and defendant in the above entitled suit, the injunction is continued, and hearing set for Wednesday, November 24" 1909.

BY THE COURT.

Endorsement: No. 16 Oct. Term, 1909—Commonwealth of Pennsylvania v. The Plymouth Coal Co.—Agreement to Continue Injunction—Filed 19 Nov., 1909.

48 In the Court of Common Pleas of Luzerne County, in Equity, October Term, 1909.

No. 16.

COMMONWEALTH OF PENNSYLVANIA upon the Application of David T. Davis, Inspector of Mines of the Ninth District of the First Anthracite Coal Inspection District of Pennsylvania, Acting in Behalf of the said Commonwealth,

vs.

THE PLYMOUTH COAL COMPANY.

Now, 1st day of December, 1909, by agreement of counsel for the plaintiff and defendant in the above entitled suit, the injunction is continued and hearing set for Wednesday, December 7, 1909.

BY THE COURT.

Endorsement: No. 16 Oct. T., 1909—In Equity—Commonwealth of Pennsylvanvia v. The Plymouth Coal Co.—Agreement to Continue Injunction—Filed 2 Dec., 1909.

49 In the Court of Common Pleas of Luzerne County, in Equity, October Term, 1909.

No. 16.

COMMONWEALTH OF PENNSYLVANIA et al., Plaintiff,

VS.

THE PLYMOUTH COAL COMPANY, Defendant.

Now 3rd day of December 1909, the plaintiff joins issue on the matter alleged in the answer.

ATHERTON & JONES,
Solicitors for Plaintiff.

Endorsement: No. 16 October Term 1909—Commonwealth of Pennsylvania, Plaintiff vs. The Plymouth Coal Company, Defendant—Replication—Filed 3" Dec. 1909.

50 In the Court of Common Pleas of Luzerne County, in Equity, October Term, 1909.

No. 16.

COMMONWEALTH OF PENNSYLVANIA upon the Application of David T. Davis, Inspector of Mines of the Ninth District of the First Anthracite Coal Inspection District of Pennsylvania, Acting in Behalf of the said Commonwealth,

VS.

THE PLYMOUTH COAL COMPANY.

Now, 8th day of December, 1909, by agreement of counsel for the plaintiff and defendant in the above entitled suit, the injunction is continued and hearing set for Wednesday, December 15th, 1909.

BY THE COURT.

Endorsement: No. 16 Oct. Term 1909—Commonwealth of Pennsylvania v. The Plymouth Coal Co.—Agreement to Continue Injunction—Filed 8 Dec. 1909.

51 In the Court of Common Pleas of Luzerne County, in Equity, October Term, 1909.

No. 16.

COMMONWEALTH OF PENNSYLVANIA upon the Application of David T. Davis, Inspector of Mines of the Ninth District of the First Anthracite Coal Inspection District of Pennsylvania, Acting in Behalf of the said Commonwealth,

VS.

THE PLYMOUTH COAL COMPANY.

Now, 15th day of December, 1909, by agreement of counsel for the plaintiff and defendant in the above entitled suit, the injunction is continued and hearing set for Wednesday, December 22nd, 1909.

BY THE COURT.

Endorsement: No. 16 Oct. Term 1909—The Commonwealth of Pennsylvania v. The Plymouth Coal Co.—Agreement to Continue Injunction.—Filed 15 Dec. 1909.

52 In the Court of Common Pleas of Luzerne County, October Term, 1909.

No. 16.

COMMONWEALTH OF PENNSYLVANIA upon the Application of David T. Davis, Inspector of Mines of the Ninth District of the First Anthracite Coal Inspection District of Pennsylvania, Acting in Behalf of the said Commonwealth, Plaintiff,

vs.

THE PLYMOUTH COAL COMPANY, Defendant.

Testimony of Defendant.

Present, B. R. Jones, Esq., attorney for plaintiff; Wm. C. Price, Esq., attorney for defendant.

By Mr. PRICE:

H. S. SMITH sworn in behalf of defendant.

Q. Mr. Smith, what is your occupation?
A. Civil Mining Engineer.
Q. You are employed by the Plymouth Coal Company as mining engineer?
A. Yes, sir.
Q. Have you made an examination or calculation of the barrier pillars now existing between the property of the Plymouth Coal Company and the Lehigh & Wilkes-Barre Coal Company down to Plymouth?
A. I made an examination of some of them and a calculation of all.
Q. What amount of coal is there in the barrier pillar?

Objected to by Mr. Jones as being immaterial and irrelevant.

A. In the Red Ash vein, 8.56 acres, 22 feet thick, on a basis of 1800 tons to the foot acre, 338,976 tons. The 5 foot vein, 9.57 acres, 4 feet 6 inches, 77,517 tons. Ross Vein 8.49 acres, 7 feet thick, 106,974 tons. Bennett & Cooper vein, known as the Baltimore vein, 8.4 acres, 14 feet thick, 211,680 tons. Making a total of 735,147 tons.
Q. Did you go over these figures with Mr. Bunting, engineer for the Lehigh & Wilkes-Barre Coal Co.?
53 A. I compared figures with Mr. Bunting, yes. He had, on his own initiative made calculations at his own offices and he came with his figures and compared them with mine.
Q. Did your figures and his figures agree?

Objected to by Mr. Jones as not being the best evidence.

A. Practically.
Q. What are the figures which Mr. Bunting gave you?

By Mr. JONES:

Objected to as immaterial and irrelevant and as not being the best evidence. The best evidence would be Mr. Bunting telling how he arrived at those figures.

A. Mr. Bunting's total was 705,600 tons.
Q. I wish you would place a valuation on that coal in the barrier pillar.

Objected to by Mr. Jones for the reason that witness has not shown any qualifications.

Q. Mr. Smith, how long have you been a mining engineer?
A. Twenty four years.
Q. Have you ever made reports for prospective buyers of coal property in this valley?
A. Yes sir.
Q. Are you familiar with sales of coal property and the values?
A. Yes, sir.

By Mr. JONES:

Q. Have you ever made sales yourself ?
A. I could not say that I had made sales myself, but I made reports on which sales were based in numerous instances. I am working on one now.

By Mr. PRICE:

Q. You are familiar with the purchase price paid for these properties on the reports that you have made?

54 Objected to by Mr. Jones as being immaterial and irrelevant.

A. Yes, sir.
Q. I ask you again, Mr. Smith, what is the value of the coal in those barrier pillars?
A. It is approximately $30,000 at a bulk acre price.
Q. If the Plymouth Coal Company were permitted to mine that out they would make more than $30,000.

Objected to by Mr. Jones as being speculative.

A. Most decidedly. It has a much higher value than $30,000 on a royalty basis. I was giving the lowest possible figure which is on a bulk acre basis.
Q. Are you familiar with the Gaylord mine of the Kingston Coal Company?
A. Yes, sir.
Q. Where does that lie relative to the Dodson property of the Plymouth Coal Company?
A. Right up the pitch from the Dodson Colliery.

Q. Is there a barrier pillar between those two properties?
A. No sir, not now, not of any account, practically none.
Q. Was the Gaylord property ever filled up with water?
A. Yes, sir.
Q. How was that water disposed of?

Objected to by Mr. Jones as being immaterial and irrelevant.

A. It was tapped by bore holes driven through the barrier pillar from the Dodson colliery into the Gaylord and these bore holes were controlled by valves so that the water could be drawn off to the capacity of the pumps in the Dodson colliery and finally a connection was driven through to the Red Ash vein at the low point on the Gaylord property and all that water was drained down to the Dodson pumps.

55 Q. Are you able to take care of all the water coming out of the Gaylord property into the Dodson?

Objected to by Mr. Jones as being immaterial and irrelevant.

Q. The Gaylord mine lies above the Dodson colliery?
A. Yes sir.
Q. And the water from the Gaylord property goes along its natural course into the Dodson property?
A. Yes sir.
Q. And the same conditions exist between the Dodson and Gaylord property as far as the lay of the land is concerned, as exist between the Dodson and the property of the Lehigh & Wilkes-Barre Coal Company?
A. Virtually the same.
Q. The barrier pillar between the Dodson and the Gaylord has been mined without serious danger to the employees of the Company?

Objected to as immaterial and irrelevant.

A. It was done by the consent of the mine inspector.

By Mr. JONES:

This is objected to as immaterial and irrelevant. He cannot give his consent where there is any violation of the law and if he did give his consent the best evidence would be either his testimony, if the consent was given orally, or if in writing, the written consent itself.

Q. What mine inspector?
A. Davis.
Q. The plaintiff in this case?
A. Yes, sir.
Q. How do you know he has knowledge that that is being done down there?
A. I had a personal conversation with him and was in the mines when some of the holes were located and the matter discussed.

56 Cross-examination.

By Mr. JONES:

Q. Mr. Smith, is the Gaylord being operated now?
A. Yes, sir.
Q. Adjoining the Plymouth Coal Company?
A. Yes, sir.
Q. There is a barrier pillar there between the two properties?
A. Hardly. In certain veins.
Q. Give me the veins and the thickness of the pillar in each vein.
A. I cannot do it without the maps. I will say this, however, there are open connections between the Gaylord and Dodson collieries in the Ross and Red Ash veins, which are the two lower veins.
Q. Now you will answer my question won't you?
A. I cannot without the maps.
Q. You know of openings, do you not?
A. Yes, sir.
Q. Openings in the barrier pillar?
A. Caused by mining the barrier pillar, mining it to the limit. There are pillars of coal but no barrier pillar in the true sense of the word because there is nothing to bar the water or gas coming from the Dodson.

By Mr. JONES:

I ask that the witness's answer be stricken out as not being responsive to my question and being argumentative.
Q. Now I ask you again, whether or not at one time there was a barrier pillar between the Gaylord and the Dodson?
A. That is not what you asked me. There was at one time.
Q. What was the thickness of that barrier pillar?
A. Approximately two hundred feet, in the Red Ash vein.
Q. What in the Ross vein?
A. It was of various thicknesses.
57 Q. What was the average thickness?
A. Well I should say probably fifty feet. There was and has been however, ever since I have been connected with the Plymouth Coal Company an open connection in the Ross Vein between the Gaylord and Dodson colliery.
Q. What was the thickness of the barrier pillar in the Bennett & Cooper vein?
A. There is practically none, the workings are connected.
Q. What was the barrier pillar at one time?
A. There never was a barrier pillar in the true sense of the word.
Q. Then since you have been connected with the Plymouth Coal Company the barrier pillar between the two operations has been abandoned?
A. In the Bennett & Cooper vein, which is one vein, nearly all the way the two properties touch.
Q. And you call that the Baltimore vein?
A. Yes sir.

Q. The barrier pillar in the Red Ash vein, when was that cut into?

A. I can give you the date by referring to my notes.

Q. Give me some idea?

A. I should say about from three to four years ago.

Q. At the time the barrier pillar was broken into there was a large body of water back of the pillar in the Gaylord operations?

A. Yes, sir.

Q. And before you touched the barrier pillar there was an arrangement made between the Kingston Coal Company operating the Gaylord, the Plymouth Coal Company operating the Dodson and the mine inspector, that if the Plymouth Coal Company bored holes testing the barrier pillar for the purpose of letting off the water and taking care of it at all times, they would give their consent to mine the barrier pillar?

58 A. I never saw any agreement between the Kingston Coal Company, the Plymouth Coal Company and the Mine Inspector, but the actual condition of affairs there was this, that the Kingston Coal Company had mines to the right of the Red Ash vein and for our own protection, the Plymouth Coal Company, we had maintained in the Red Ash vein a barrier pillar two hundred feet thick. We wanted the coal put on the emarket. We had to take the pressure off of that pillar safely so the matter was taken up with the mine inspector and we calculated the pressure on the pillar and the supports were tapped and the control was tested and we drew the water off under control as we could handle it with the pumps until it was entirely drained and we went right along and mined that pillar out and there is some little still being mined.

Q. There was a barrier pillar in the Red Ash vein maintained by the Plymouth Coal Company for the purpose of protection?

A. Yes, sir.

Q. For the purpose of protection from the large body of water back of the pillar in the Gaylord property?

A. Yes, sir.

Q. To mine that pillar without tapping the water would have been dangerous to the mining operations in the Dodson?

A. Yes, sir.

Q. But letting the water off gradually, reduced the pressure and of course avoided any danger?

A. Yes, sir.

Q. Then you finally did tap the pillar did you not?

A. Yes, sir.

Q. And the water was gradually taken off of the Gaylord operations?

A. Yes, sir.

59 Q. And after the danger was removed then the mine inspector gave permission to mine that barrier pillar?

A. I don't know that he ever said anything about that. The object of drawing the water off was for the purpose of mining the coal.

Q. You did not attempt to remove the danger without first consulting the mine inspector?

A. The matter was brought up to the mine inspector.

Q. And it was only after consultation with him and after measurements by yourself and the mine inspector that the water was taken off and the barrier pillar mined into?

A. Yes, sir.

Q. Ever since that time the Plymouth Coal Company has been taking care of the water in the Gaylord operations?

A. Whatever came down. The Gaylord has been doing the pumping but should the sump overflow and the mine become flooded, all the water that overflows we get in the Dodson colliery.

Q. In the event of the Gaylord operations being abandoned would it be possible for any large body of water to be held in the Gaylord that would endanger the Dodson?

A. Certainly not.

Q. Practically now with the consent of all parties, it is one operation with respect to the water?

A. Yes, sir.

Q. All the water made by the Gaylord flows to the Plymouth Coal Company and that is being taken care of by you?

A. No, it does not now.

Q. Where does it flow?

A. To their sump.

Q. If that overflows it comes to your property and you take care of it?

A. Yes, sir.

60 Q. And there cannot be any danger in the future?

A. No sir.

Q. Now in the calculation you made with respect to the Red Ash vein how did you arrive at 8.56 acres in the 22 foot vein?

A. Calculated from the map

Q. In making that calculation you had a medium or average thickness of the barrier pillar?

A. No, sir, I took the actual barrier pillar as it appeared on the map. I did not average anything, took it as it actually was.

Q. And that is what you did in the 5 foot vein?

A. In all the veins.

Q. You have given us at a former hearing the average thickness of each vein?

A. I think we did calculate what would be each vein's average. When I made the calculation I used the actual area.

By Mr. PRICE:

Q. If the barrier pillar were taken away between the property of the Plymouth Coal Company and the Lehigh & Wilkes-Barre Coal Company, the water could be drained into the Lehigh & Wilkes-Barre property and pumped out by them without any trouble, could it not?

Objected to by Mr. Jones as being immaterial and irrelevant.

A. Certainly.
Q. Is this the statement of the coal in the barrier pillars made out by you, Mr. Smith?
A. Yes, sir.

By Mr. PRICE: I offer this in evidence, marked "Defendant's Exhibit "A."

Q. Mr. Smith, the only water in the Baltimore vein of the Plymouth Coal Company runs into their sump and the water in the Ross and Red Ash veins is pumped out by the Dodson colliery?
A. That may very readily be. I think possibly it is done.

61 Mr. T. R. PHILLIPS sworn.

By Mr. PRICE:

Q. Mr. Phillips, what is your occupation?
A. Treasurer of the Plymouth Coal Company.
Q. How long have you been engaged in the coal mining business?
A. I have been with the Plymouth Coal Company twenty six years.
Q. If the Plymouth Coal Company were permitted to mine out this barrier pillar what would it be worth to the Coal Company?

Objected to by Mr. Jones as being immaterial and irrelevant.

A. From forty to fifty cents a ton net profit.
Q. What would be the total amount of the value to the company then?

Objected to by Mr. Jones as being immaterial and irrelevant.

A. About three hundred thousand dollars net profit.

By Mr. JONES: If the Plymouth Coal Company are permitted, they will skin out of that colliery every ounce of coal in the barrier pillar, will they not?
A. Every possible pound, yes sir.

62 I hereby certify that the foregoing mentioned witnesses were duly produced before, and sworn by, me and examined in my presence at the times and places above mentioned; that their testimony was taken down stenographically and afterwards reduced to typewriting by me and that the foregoing is a correct copy of said testimony.

FLORENCE DEWEY,
Commissioner Appointed by Court of Common Pleas of Luzerne County to Take Testimony.

63 *Calculation of the Tons of Coal Remaining in the Various Barrier Pillars on the Plymouth Coal Company's Property Along the Line of Land of the Lehigh & Wilkes-Barre Coal Company.*

Red Ash Vein.

Vein 22 ft. thick—8.56 acres, figured on the basis of 1800 tons to the foot acre, gives 338,976 tons.
5 foot vein—9.57 acres—vein 4 ft. 6" thick—77,517 tons.

Ross Vein.

8.49 acres—vein 7 ft. thick—106,974 tons.

Bennett & Cooper Vein. (Baltimore).

8.4 acres—vein 14 ft. thick—211,680 tons.

Recapitulation:

Red Ash Vein	338,976	tons.
5 Foot Vein	77,517	"
Ross "	106,974	"
Bennett & Cooper Vein, (Baltimore)	211,680	"
	735,147	"
	735,147	tons.

Defendant's Exhibit "A"

Endorsement: No. 16 October Term, 1909—Commonwealth of Pennsylvania upon the application of David T. Davis, Inspector of Mines of the Ninth District of the First Anthracite Coal Inspection District of Pennsylvania, acting in behalf of the said Commonwealth, Plaintiff vs. The Plymouth Coal Company—Testimony on behalf of defendant—Filed 22 Dec. 1909.

64 *Testimony of Plaintiff.*

In the Court of Common Pleas of Luzerne County, October Term, 1909.

16.

COMMONWEALTH OF PENNSYLVANIA upon the Application of David T. Davis, Inspector of Mines of the Ninth District of the First Anthracite Coal Inspection District of Pennsylvania, Acting in Behalf of the said Commonwealth,

vs.

THE PLYMOUTH COAL COMPANY.

Testimony of witnesses in the above entitled case, taken on the 4th day of October, 1909 (Monday), in the office of Atherton & Jones, at 2 o'clock in the afternoon, before Mary E. Dean, Commissioner.

Appearances:

B. R. Jones, Esq., for David T. Davis.
Col. W. C. Price, for defendant company.

It is agreed that the averments and facts set forth in the first, second, third and fourth paragraphs of plaintiff's bill of complaint are true. The defendant denies the fifth paragraph. The averments in sixth paragraph of plaintiff's bill of complaint, are admitted to be true.

DAVIS T. DAVIS called, produced, sworn and examined:—

Q. You are Mine Inspector of the Ninth District of the First Anthracite Coal Inspection District of Pennsylvania?
A. Yes.
Q. You are plaintiff in this Bill for injunction against the defendant, the Plymouth Coal Company?
A. Yes.
Q. Has the Plymouth Coal Co. ever filed in your office any duplicate survey certified to, showing the thickness of the barrier pillar to be left between their property and the property of the
65 Lehigh & Wilkes-Barre Coal Co. in Plymouth, Luzerne County.
A. No sir.
Q. The Plymouth Coal Co. and the Lehigh & Wilkes-Barre Coal Co. are joint owners in Plymouth?
A. Yes.
Q. What property is worked by the Plymouth Coal Co. down in Plymouth?
A. The Dodson.
Q. That adjoins what property of the Lehigh & Wilkes-Barre?

A. The Nottingham, #11, and Parrish Coal Co.
Q. About how many men are employed in the Dodson?
A. Approximately two hundred.
Q. In the Nottingham?
A. About four hundred.
Q. How many in the Parrish?
A. About four hundred.
Q. Describe the location of these properties in Plymouth Borough?
A. The Dodson Colliery is located between the Nottingham Colliery and Lance #11. The workings of the Nottingham colliery, both in the Ross and Red Ash, extend down to and below and across below the Dodson, the Parrish in the upper veins they run inside and below them.
Q. Is the Dodson Colliery located down on the flat ground or on the side of the mountain?
A. Down on the flats.
Q. How about the Nottingham and Parrish?
A. The Nottingham still further in the depth.
Q. How about the Parrish?
A. The same way, they extend down considerably further.
Q. Then the mining operations of the Dodson are practically above the mining of the Plymouth and Parrish Companies?
A. The Nottingham and #11.
Q. How deep from the workings of the Dodson colliery?
A. It runs to minus three hundred, that would be strata, about eight hundred over the vein at the lower point.
Q. What veins are they working in the Dodson Colliery?
A. Bennett.
66 Q. Give them to me in the order in which they appear from the surface.
A. Hillman, Bennett and Cooper, Ross and Red Ash.
Q. The Red Ash is the lowest vein?
A. Yes.
Q. What veins do they work in the Nottingham, #11 and the Parrish?
A. In the Nottingham, the Ross and Red Ash, in the #11 they are working the Hillman, the Five Foot, the Cooper, Bennett, Ross, Red Ash.
Q. How deep are the Red Ash workings in the Nottingham?
A. They go down to minus 700 or 800 below tide.
Q. What do you mean by minus in this connection?
A. In this region around here, it is so many feet above sea level, and the same elevations are carried down in the mines, and when it gets to sea level, and below, it is minus. The lowest point of the Nottingham and Red Ash from the surface would be twelve hundred feet, that is a rough estimate.
Q. What is the depth of the workings of the Red Ash and Dodson from the surface?
A. About 850, the lowest point.
Q. #11?
A. Perhaps 1050 to 1100.

Q. The Parrish?

A. About 900, that is rough estimates, as near as I can gage it.

Q. As mine inspector you sent a notice, a copy of which is attached to your Bill in Equity, in this case, to the Plymouth Coal Company and the Lehigh & Wilkes-Barre Coal Co.?

A. Yes.

Q. Whether or not you received any response from the Plymouth Coal Co.?

A. I received a letter from Mr. Haddock.

Q. Whether or not that copy which appears in the plaintiff's Bill in Equity, on page 7, is a correct copy of this letter?

A. Yes.

Q. Whether or not the engineer of the Lehigh & Wilkes-Barre met you in pursuance of your notice?

A. Yes, he reported at my office.

67 Q. Did the engineer for the Plymouth Coal Co. ever meet with you for that purpose?

A. Yes, he has met there for that purpose, not at this last writing, but some years ago.

Q. Do you know that of your own personal knowledge?

A. Yes.

Q. When was that?

A. In November, 1906, about the 28th.

Q. Who appeared there?

A. Mr. Smith, Mr. James B. Davies——

Q. Who is Mr. Smith?

A. Their engineer.

Q. Who is Mr. James B. Davies?

A. Superintendent of the same Company.

Q. Was the Lehigh & Wilkes-Barre represented at that meeting?

A. Yes, Mr. Bunting, their Chief Engineer, was there.

Q. What was done at that meeting?

A. Nothing.

Q. Whether or not you arrived at the thickness of the barrier pillar to be left at that time?

A. No.

Q. You have maps as Mine Inspector, which have been handed to you in pursuance of the Mine Laws, in respect to this respective Company?

A. Yes.

Q. Have you them with you?

A. Yes.

Q. I wish you would produce them. Show me the map of the Dodson Colliery, the Red Ash Vein, whether or not the extensions of this map have been carried out recently?

A. Yes, up to date.

Q. Point out on this map the boundary line between the Dodson Colliery and the various operations of the Lehigh & Wilkes-Barre operations.

A. On the East side of the map appears the operations of the #11, on the South side the Nottingham; on——

Q. How is this map bounded with respect to the properties of the Lehigh & Wilkes-Barre Coal Co.?

A. It is bounded on the East and West by the Lehigh & Wilkes-Barre Coal Co.

Q. That is in the Red Ash workings?

A. Yes.

Q. What is the vein above the Red Ash?

A. Ross.

68 Q. How are the operations of the Dodson Colliery bounded in the Ross Vein with respect to the operations of the Lehigh & Wilkes-Barre Coal Co.?

A. The Lehigh & Wilkes-Barre on all sides, as I stated, on the upper side the Kingston Coal Co. N. W.

Q. Look at the map of the Red Ash operations, whether or not there appears a barrier pillar on this map of the Red Ash vein in the Dodson Colliery?

A. There is a portion of the barrier maintained.

Q. Is that maintained all along the boundary line between the two properties?

A. There is a barrier pillar maintained here in the Dodson.

Q. What is the greatest thickness of that barrier pillar?

A. Approximately about seventy feet.

Q. What is the least thickness?

A. Ten feet.

Q. What is the average thickness of that barrier pillar all along the line?

A. It would take sometime to figure this out.

Q. Are you able now to give me an estimate?

A. About forty ft.

Q. What are these pink lines on this map?

A. They indicate the places that are filled with silt.

Q. Whether or not they are flushing this colliery?

A. Yes.

Q. What do you mean by flushing?

A. Putting culm back in worked out collieries.

Q. What is the purpose of this?

A. To protect the roof.

Q. What per cent of the coal is worked out here?

A. I cannot tell you.

Q. Have these places all been worked out that are indicated on the map?

A. The chambers marked with pink have been worked out and filled with culm.

Q. What effect would that have on the surface?

A. It protects the surface, but if too much coal is taken out, too much surface rests on the culm.

69 Q. Whether or not the culm can maintain the surface?

A. There would be a gradual subsidence.

Q. What are the conditions there with respect to mining operations subsiding?

A. This entire mine is subsiding.

Q. You mean gradually going down?
A. Yes.
Q. Does that extend all through their operations?
A. Yes.
Q. And that includes each vein in the operations?
A. Yes.
Q. Whether or not there are surface indications of the mine subsiding?
A. Yes. The D. L. & W. have got to bring their railroad up to grade about once a year. There is some evidence of gradual subsidence in the Borough of Plymouth.
Q. Whether or not the railroad tracks of the D. L. & W. run on the surface over these operations?
A. Yes.
Q. And you say by reason of the subsidence, the tracks are lowered somewhat?
A. Yes.
Q. And every year it is necessary for them to raise their tracks to the proper grade?
A. Yes.
Q. What is the cause of that, Mr. Davis?
A. Gradual subsidence.
Q. In what?
A. In the mines.
Q. What is the cause of this subsidence in the Dodson?
A. On account of the coal being worked out, and permitting the cover to lower.
Q. On the side of the L. & W.-B. adjoining the operations of the Dodson, what thickness of barrier pillar do they maintain?
A. On this pillar side two hundred feet.
Q. What is the greatest thickness that they maintain?
A. —.

Objected to.

Q. What is the greatest thickness of the barrier pillar on the side of the L. & W.-B. operations?
A. About 210 feet.
Q. What is the least thickness of that barrier pillar?
A. 60 ft.
Q. What map is that you are testifying from?
A. The Westerly and Southeasterly section of the map of
70 the Red Ash Vein in the L. & W.-B. operations.

This map offered in evidence and marked Exhibit 4.

Q. What map is this that you are now testifying from?
A. This is the upper Red Ash map, Lance #11.
Q. Bordering on which side of the Dodson?
A. On the east side.
Q. What is the barrier pillar maintained on that side by the Lehigh & Wilkes-Barre?
A. One hundred and five feet.

Q. That is the uniform width?
A. Yes.
Q. What is the average width of the barrier pillar maintained by the L. & W.-B.?
A. I cannot tell, I can measure it.
Q. I wish you would produce the map of the Bennett Vein of the Dodson colliery. Is it the one marked plaintiff's Exhibit 3?
A. Yes.
Q. This is the upper vein of the Dodson colliery?
A. Yes.
Q. Still one vein above it?
A. Yes, working.
Q. This is above the Ross?
A. Yes, and Ross above the Red Ash.
Q. What are these third lines on this map?
A. It shows the chambers with culm.
Q. Whether or not those same conditions exist in the Ross vein, as to flushing?
A. No flushing has been done in the Ross Vein for several years.
Q. Has ever flushing been done in the Ross?
A. Yes.
Q. Any flushing been done in the Red Ash?
A. Yes.
Q. Any flushing been done in the Bennett?
A. Yes.
Q. Any flushing been done in the Cooper?
A. Yes.
Q. One above that, is there?
A. Yes, the Five Foot.
Q. Any flushing being done in the Five Foot Vein?
A. I don't know, that is not being worked at the present time.
Q. What is the character of the coal in the Red Ash Vein of the Dodson?
A. It is full of slips, partings between the benches.
71 Q. What do you mean by slips?
A. Some call them loose ends, it is partings. It is like a fisher, it cracks.
Q. Whether or not a vein of that kind will support the same load as any other vein in which the slips do not exist?
A. No, it will not safely, as much weight as a vein that is solid.
Q. What is the character of the coal in the Red Ash Vein in the L. & W.-B. operations?
A. Same character.
Q. What is the character of the coal in the Dodson in the Ross Vein?
A. Very much broken.
Q. What is the cause of that?
A. I think it is due to this gradual subsidence that is taking place, it is crushing the coal out and powdering it.
Q. Whether or not these conditions exist in the Bennett, Cooper and Five Foot Vein of the Dodson?

A. The Five Foot is abandoned, they exist in the others.

Q. What are the conditions generally in the Dodson Colliery with respect to the maintenance of the surface support?

A. There is a gradual subsidence of that entire property going down gradually.

Q. How long has that been going on?

A. Several years to my knowledge.

Q. What will be the ultimate result?

A. The ultimate result will be that the pillars will be entirely destroyed and the mines will have to — abandon-, due to caves, due to being too dangerous for men to work there.

Q. Whether or not they have had any caves recently?

A. Yes, local caves.

Q. Do you know what the result was?

A. The result is that that portion of the mine will have to be abandoned.

Q. When were you in the Dodson colliery last?

A. About a month ago.

72 Q. When you went down into that mine, did you go as far as the barrier pillar?

A. No.

Q. Why not?

A. Could not get there on account of explosive gas, and water.

Q. Whether or not that was dangerous?

A. Yes, explosive gas is dangerous.

Q. How much water was there?

A. I don't know exactly.

Q. How large or small volume of water?

A. A large quantity.

Q. Whether or not the Dodson Colliery makes considerable water?

A. It does not.

Q. Do they use pumps there?

A. Yes, when you speak about the Dodson making considerable water, the mines do not make considerable water, but there is a great deal of water running into the Dodson from other mines.

Q. What other mines?

A. Gaylord.

Q. That is the Kingston Coal Co. operation?

A. Yes, on the Northwest upper end.

Q. That portion is higher up than the Dodson?

A. Yes.

Q. Whether or not they have cut through from the Gaylord into the Dodson?

A. Yes.

Q. Whether or not the Gaylord mines naturally drain its water into the Dodson Colliery?

A. Yes, a good portion of it.

Q. Do you know then, how, that water is taken to the surface by the Plymouth Coal Company?

A. It is pumped up from the Red Ash Vein to the foot of the shaft, and from the foot of the shaft up to the surface.

Q. Whether or not the Plymouth Coal Company attempted to mine that portion—that barrier pillar shown on your map there that you have produced?

A. Yes.

Q. About how long ago was it they threatened to mine that barrier pillar, extending along the boundary line to the L. & W.-B.

73 operations, as described by the Mine Inspector?

A. About three weeks ago, possibly a month.

Q. What would be the result, if that barrier pillar was mined ont?

A. The result would be that it would bring a squeeze on the pillar on the lower side of it, and perhaps go over into the Nottingham operations and travel on indefinitely.

Q. How long have you worked around the mines?

A. About 35 yrs.

Q. In what capacity?

A. Pretty near every capacity you can think of, I started as breaker boy at about eight years of age, worked with my father when about nine, in Schuylkill County, tended door, drove mule, bratticed, track laid, laborer, mine work on engineer corps, cnief inspector for Strickney & Conyngham, and serving in this position almost seven years.

Q. You are familiar with the Red Ash Vein?

A. Yes.

Q. As mine inspector and from your general knowledge as a mining man, knowing the conditions as they exist there, the Dodson Colliery, what in your opinion would be the width of the barrier pillar that should be maintained between these properties, the Dodson Colliery, and the properties of the L. & W.-B. Coal Co. adjoining as a barrier pillar to protect the safety of the employés in these collieries?

A. Ought to have a barrier there 285 feet wide, the lower portion of the property.

Q. In arriving at the width of the barrier pillar, what do you take into consideration?

A. The thickness of the strata overlying the vein, the thickness of the vein, and the quality and nature of the seam.

Q. What is the thickness of the strata above the Red Ash Vein in the Dodson Colliery?

A. In that lower portion there about 850 feet.

Q. What is the thickness of the Red Ash Vein?

A. Twenty-two feet would be a fair average, 22 feet.

Q. You have already given us the character of the vein as slippy and soft.

A. Yes, it has no adhesion.

74 Q. When you said 285 feet as the thickness, you mean 285 feet on each side of the boundary line, or about 142 feet on each side?

A. About 142½ feet for each side.

Q. And how far above the Red Ash vein is the Ross Vein in the Dodson Colliery?

A. That I don't know.

Q. How far —the surface is it?

A. It is about 725 feet.

Q. What is the thickness of the Ross Vein?

A. About seven ft.

Q. What in your opinion ought to be the width of a barrier pillar in the Ross Vein maintained along the boundary line between these several properties?

A. About 45 feet on each side, ninety feet in all.

Q. How far below the surface is the Bennett and Cooper Vein in the Dodson Colliery?

A. About 530 feet.

Q. What is the thickness of the Bennett & Cooper veins?

A. The Bennett runs twelve to fourteen feet and the Cooper would run about ten; from 20 to 25 ft.

Q. What is the character of the coal in these veins?

A. That coal is free coal—it chips easily, has a great many slips in it.

Q. What in your opinion ought to be the width of a barrier pillar in the Bennett and Cooper Veins in this colliery?

A. Down on the lower part of the property it ought to be a little over two hundred feet.

Q. Would that be 200 feet on each side?

A. 100 on each side.

Q. Whether or not in your opinion it would be dangerous to the employés in these several collieries and operations to mine out that barrier pillar in the Dodson Colliery?

A. It would be dangerous.

Q. Would that same answer do for each seam in the Dodson colliery?

A. Yes.

Q. You have already stated that there now exists a pillar
75 of coal along the line of the Dodson Colliery adjoining the L. & W.-B. operations, averaging about seventy feet?

A. In the Red Ash Vein? Roughly stated, I think I said forty-five.

Q. Whether or not in your opinion you consider it dangerous to the employés in any one of these different operations that you have spoken about, if the Plymouth Coal Company was to mine out any part of that pillar of coal as it now stands, and as it now appears on your map, adjoining the L. & W.-B. Coal Co.?

A. I would consider it dangerous.

Q. Why?

A. On account of taking away that portion of the barrier pillar, because the mines adjoining on each side will work for many years to come, while the Dodson Colliery will be abandoned long before and allowed to fill with water, which body of water will be resting against the pillars of the adjoining properties, making it dangerous for the men employed therein.

Q. Whether or not in the event of the Dodson Colliery suspending operations and being abandoned, that pillar of coal, as it now stands

along the line of their property adjoining the L. & W.-B. Coal property, is not dangerous in itself, as not being thick enough to maintain any body of water that might exist in the Dodson Colliery?

A. Yes, I would consider it so.

Cross examination:

Q. Who told you they were mining a barrier pillar three weeks or a month ago?

A. No one.

Q. How did you find it out?

A. By making my tour through the mines.

Q. Is that the only way you knew they were mining a barrier pillar, by your own investigation in the mines?

A. Yes, and my investigation of the maps. That is all I know of.

Q. Who complained to you first about their mining that barrier pillar?

A. No one.

76 Q. Did the L. & W.-B. ever make complaint to you?

A. No.

Q. Did they ever give you any information?

A. No, no more than to say that they were making efforts to get in there to make a survey.

Q. Did any of the officials of the Lehigh & Wilkes-Barre make complaint to you in the last year about this barrier pillar?

A. No sir.

Q. Did they ever call your attention to it?

A. No.

Q. Ever have any conversation with any of them on the subject?

A. Yes.

Q. When?

A. Perhaps a month and a half ago.

Q. Whom was it with?

A. Mr. Huber.

Q. Did he send for you?

A. No.

Q. Did you go to his office yourself?

A. Yes.

Q. What occurred?

A. I went to Mr. Morgan, R. Morgan's office, first, then after I was there with Mr. Morgan, I stepped over to see Mr. Huber, and I learned that the engineers of the Lehigh & Wilkes-Barre were making an effort to get into the Dodson mines.

Q. What occurred between you and Mr. Huber?

A. He told me they were making an effort to get into the Dodson mines, that that had been refused.

Q. What did you tell him?

A. I told him there was a remedy.

Q. Did you tell him anything about the thickness of the barrier pillars on the Dodson side at that time?

A. No.

Q. What first caused you to commence these proceedings?

A. I have been making an effort to get a barrier pillar between these two properties for some years.

Q. Other than this communication you wrote to Mr. Haddock?

A. Yes.

Q. What other effort did you make?

A. About November 28th, I wrote a letter to Mr. James B. Davies, Mr. Haddock's engineer, in November, 1906, to send his
77 engineer to my office, so that we could decide as to the width of a barrier pillar, also sent to Mr. Bunting, Chief Engineer of the L. & W.-B.; those gentlemen reported at my office, we talked the barrier pillar over, but did not come to any definite conclusion.

Q. Then since November, 1906, you took no further steps until a few weeks ago?

A. Yes, in 1907 I called their attention to it again.

Q. What did you do then?

A. I wrote letters to these same parties.

Q. And in 1908 you did the same thing?

A. No.

Q. Until August, 1909, you did nothing after your attempt in 1907?

A. No sir.

Q. Have you had no conference with the L. & W.-B. except what you told me here, about Mr. Huber and Mr. M. R. Morgan?

A. No.

Q. What were the first steps you took in bringing this injunction proceedings?

A. After I had written a letter to Mr. Huber, and also the L. & W.-B. and the engineers did not report, then I consulted my attorney and told him to bring an injunction against the Plymouth Coal Company.

Q. Outside of this conversation you had with Mr. Huber and what you say you had with Mr. Morgan, is the only conversation or interview you have had with the L. & W.-B. in regard to barrier pillar?

A. That is all.

Q. Why didn't you bring action in 1906?

A. I left the matter for the engineers to decide.

Q. Why not this year?

A. The mines have shipped many thousand tons since.

Q. Why didn't you bring the injunction in 1907? They were closing in on the barrier pillar.

A. That I don't know, I don't know as they were then.

78 Q. You say that in your opinion a barrier pillar should be left in the Red Ash vein in the thickness of 285 ft.?

A. Yes.

Q. Is there a barrier pillar now all around the Dodson Colliery of that thickness?

A. No.

Q. What is the thickness on the east side of the Dodson colliery?

A. What vein?

Q. The Red Ash vein?

A. Within the Dodson boundary?
Q. I am speaking of the barrier pillar on the East side of the Dodson mines.
A. Taken in both sides about one hundred and sixty.
Q. Can you tell from the maps?
A. What is that?
Q. Can you tell from the maps what the thickness is on the L. & W.-B. side?
A. Yes, 125 feet on the east side.
Q. How thick on the Dodson property?
A. The greatest point is seventy.
Q. What is the smallest point?
A. The smallest point about 30 or 40.
Q. Is the width of the barrier pillar of the L. & W.-B. 125 feet wide along the entire east side of the Dodson Coal Co.?
A. I would not think so, the further up the hill you go, the less the pillar ought to be. I would say yes.
Q. Then come to the South side, what is the greatest width of the barrier pillar on the Plymouth Coal Co. side along the south side of the workings?
A. The smallest is 30 and the greatest is 70.
Q. How long a distance is that width of 70 feet?
A. 50 ft.
Q. How long a distance is the width of 30 ft.?
A. For 700 ft.
Q. What is the entire length of that property along there?
A. About 3100 feet.
Q. What colliery is working on the easterly side of the Dodson?
A. Lance #11 Lehigh & Wilkes-Barre.
79 Q. What colliery is working on the south side of the Red Ash?
A. Nottingham #15.
Q. Who is working on the west side?
A. Nottingham #15.
Q. Where does the Parrish come in?
A. On the upper vein.
Q. What is the total length here of the west side of this Red Ash Vein?
A. About 2200 feet.
Q. What is the thickness of the barrier pillar on the Plymouth Coal Co. side of the Red Ash vein?
A. About 2200 feet, the least measurement is ten.
Q. What is the length of it?
A. Sixty feet.
Q. How long does that extend?
A. Eighty feet.
Q. Going back to the South side, what is the width of the barrier pillar on the Lehigh & Wilkes-Barre side?
A. 200 feet.
Q. The entire distance?
A. Yes.

Q. What is the width of the barrier pillar on the L. & W.-B. on the west side?

A. The smallest is 60 feet, the greatest is 145 feet.

Q. Then as a matter of fact, there is not a single piece of barrier pillar around that property 285 in width?

A. No.

Q. And some places only 170 feet?

A. Yes.

Q. Has not this system of flushing mined out areas with culm been adopted only during the past few years?

A. It has been adopted for,—well it *it* had been adopted before I became an inspector, and that is seven years.

Q. If they can flush and fill up all the mined out areas along the division lines of these properties, with culm, will not that decrease to a great extent the necessity of having the barrier pillars as wide as if they did not use that system and method?

A. I don't think it would enter into that part of it at all.

Q. You don't think then, that if they could fill up with culm within several hundred feet of the division line, that it
80 would help in any way to keep back the water or sustain the surface over that mined out area?

A. I think there would be a subsidence just the same. I don't think it would offer any relief for the pillar on this side.

Q. Any greater subsidence in Plymouth than has occurred in many other portions of Luzerne County, due to mine workings?

A. Yes, here particularly; we have no other place in Plymouth at this depth that there is any subsidence whatever.

Q. What is the evidence of subsidence in Plymouth that you have noticed?

A. I have noticed it in the mines.

Q. I am speaking of the surface.

A. I have noticed it on the railroad.

Q. How do you know that is due to workings in the Dodson property?

A. Because it is immediately over this land.

Q. Is there any subsidence in other portions of Plymouth that are not over the Dodson workings?

A. Not on this same level.

Q. I am speaking of surface indications.

A. Yes, on the side hills.

Q. Any other evidence of any mine workings subsiding other than the property situated directly over the Dodson mine?

A. No. There is evidence of caves, but not subsidence.

Q. Where are those caves?

A. Up on the side hills.

Q. You said a while ago that the evidence of subsidence is shown in the D. L. & W. tracks, that the D. L. & W. had been required from time to time to build up their railroad tracks, is that so?

A. Yes.

Q. Have they been reconstructed only over the Dodson property?

A. I think so.

Q. Do you know?

A. I travel all these mines, and from knowledge of the ground, I do not know a place where subsidence has taken place, except this property here. I am an authority to know that, because I have been on the ground. We have had a subsidence on
81 the flats due to a squeeze in the Nottingham and Parrish a couple of years ago, but that is way across the river.

Q. How do you know but that the subsidence along the D. L. & W. is due to the lateral pressure?

A. It should then show itself on the inside.

Q. You are willing to swear that all the subsidence that has taken place in Plymouth, that you have just spoken of, is entirely due to the workings in the Dodson property of the Plymouth Coal Co.?

A. Yes.

Q. Where else is there evidence of subsidence besides repairs to the D. L. & W. tracks that you spoke of?

A. I don't know of any.

Q. Tell me exactly then, where there has been a subsidence along the D. L. & W. tracks that requires repairing of those tracks?

A. A little west of the breaker.

Q. Were the tracks repaired due to this subsidence?

A. A couple of years ago I saw them, yes.

Q. Have they repaired the tracks since that time because of any subsidence?

A. I don't know.

Q. When did they repair the tracks before that caused *any* subsidence?

A. Perhaps a year before that, about three years ago.

Q. That is twice?

A. Yes.

Q. When before that?

A. Haven't seen them before that.

Q. Only twice then, in the last five years, when you have seen any evidence of subsidence of the Dodson Coal Co., and that is on the D. L. & W. tracks?

A. Yes.

Q. How do you know that to be due to the Dodson property?

A. I knew it was due to no other.

Q. Where else have you any evidence of it?

A. We have evidence of it on the back streets.

82 Q. What is that evidence?

A. Cave and houses partly destroyed.

Q. Do you know of any repairs to any of the water pipes or gas pipes down there in Plymouth due to any subsidence?

A. No. I am living in Wilkes-Barre, I don't know.

Q. Would not that be the first thing that would be damaged in case of subsidence?

A. That depends upon where they are working on the inside, and what territory that will occupy.

Q. Any subsidence would injure a water or gas pipe?

A. I should think so.

Q. What *are* the nature of the repairs of these D. L. & W. tracks?

A. Raising the track up and filling it in.
Q. Three years ago?
A. Yes.
Q. Did they tell you it was because of this subsidence?
A. I didn't ask any questions.
Q. You simply saw them repairing?
A. Yes.
Q. You came to the conclusion that it was because of the subsidence of the Plymouth Coal Company?
A. There could be no other cause.
Q. Do you know the amount of the fill the D. L. & W. made on the tracks at these various times you speak of?
A. No.
Q. Have you any idea?
A. No sir.
Q. Is it more than two feet fill?
A. I don't know.
Q. Twenty feet fill?
A. No idea whatever.
Q. If you have no idea how do you get the impression it was due to any subsidence?
A. I know it was subsidence, but I don't know how much.
Q. Not very great, was it?
A. Sufficient to have the surface come down there.
Q. It could not be more than 15 or 20 feet?
A. I noticed the sag in the railroad, but did not approximate how far it went down at all. It was on my way to the mines,
83 and I just gave a glance as I was passing by.
Q. Can you not picture about how much that was?
A. No.
Q. Can you give me an idea how much minable and merchantable coal there would be in a barrier pillar 2,200 feet long by 285 feet in width?
A. Yes.
Q. What would be the value of that as coal property?

Objected to as immaterial and irrelevant.

A. I don' know.
Q. Can you estimate how much minable and merchantable coal there would be in a barrier pillar of the Red Ash Vein 2,200 feet in length by 285 feet?
A. Yes, I can.
Q. Do you refuse to do it?
A. Yes.
Q. Can you give any estimate?
A. No.
Q. How long have you been in the mining business?
A. Thirty-five years.
Q. And you cannot make any estimate of the minable and merchantable coal there would be in a barrier pillar 2,200 feet by 285 feet?

Objected to as immaterial and irrelevant.

A. I can, but I am not going to do it, the engineers are here for that very purpose.

Q. Why don't you do it?

A. Because I won't.

Redirect examination:

Q. In the Ross Vein there ought to be a barrier pillar left 90 feet by 90 feet; that is 45 feet on each side; whether or not in your opinion it would be dangerous to the lives and safety of the employees if the Plymouth Coal Company were to mine the barrier pillar extending along the side of the Ross Vein adjoining the property of the L. & W.-B. Coal Co., as the barrier pillar now stands on their maps?

A. I would consider it dangerous.

84 Q. In the Bennett and Cooper mines you have testified that Q. At least two hundred feet, one hundred on each side ought to be maintained?

A. Yes.

Q. Whether or not in your opinion it would be dangerous for the employés in either of these collièries working in the Bennett and Cooper Veins, if the Plymouth Coal Company were permitted to mine that barrier pillar as it now exists on their map, or any smaller pillar into a distance of one hundred feet?

A. I would consider that dangerous.

Q. Now in your opinion the barrier pillars as they are now maintained in the Ross, Bennett and Cooper Veins, ought to be maintained as they now exist in the Dodson Colliery, in order to protect the lives of the employés?

A. Yes, by all means.

Q. What is the purpose of flushing culm into this colliery?

A. To maintain the roof and the pillars.

Q. Flushing them fills up the mined areas?

A. Yes.

Q. With a view to mining out the unmined areas?

A. Yes, that is the object.

Q. Before the flushing was in vogue at this colliery, it was usual to maintain the roof and the surface, by solid pillars of coal?

A. Yes.

Q. And the purpose of this flushing is to substitute the solid pillar of coal for the pillar of flushed culm?

A. Yes, to make preparations to take those pillars that are unmined, out.

Q. Those are the solid pillars of coal (indicating on map)?

A. Yes.

Further cross-examination:

Q. What is the greatest thickness of the barrier pillar on the East side of the Dodson property? Referring to the Ross Vein, how much thickness of barrier pillar has the Plymouth Coal Co. left on either side of the property?

A. 37½ feet.

Q. How much has the Lehigh & Wilkes-Barre left on either—on their side?

A. Sixty feet, on the upper part is 100 feet and down
85 below it is one hundred and ten feet.

Q. Take the South side, give us the thickness of the barrier pillar left on the L. & W.-B. side.

A. 130, 150, 125, 130, 120, 50, 40, 75, 30. There is one place up against the line where the drill hole is.

Q. What is the greatest width along the south side?

A. 135 ft.

Q. There is some portion of the south side where the L. & W.-B. mined right up to the division line?

A. Yes, there is one place there.

Q. What is the thickness of the barrier pillar left by the Plymouth Coal Co. on the south side, the greatest thickness and least thickness, I am talking about the Ross Vein?

A. Ten feet is the smallest, to forty feet.

Q. What is the width of the Plymouth Coal Company barrier at the point where the L. & W.-B. mined up to the dividing line?

A. Seventy feet.

Q. What is the thickness of the barrier pillar left by the Plymouth Coal Company on their westerly side of the Ross Vein?

A. 40, 60, 70, 10 and 30 feet.

Q. Now we come to the Bennett and Cooper Veins, do they come together at all on this property?

A. I think they do.

Q. As a matter of fact, there are a great many portions of the barrier pillar of the Ross vein around this Dodson property that is not ninety feet in thickness?

A. There are several portions.

Q. There are a number of portions particularly along the south side?

A. Yes, there is more than one.

Q. Coming to the Bennett and Cooper Vein, what is the greatest thickness of barrier pillar left by the Plymouth Coal Company on their east side?

A. One hundred feet, and down to eight ft.

Q. What is the greatest and least thickness left by the L. & W.-B. at the present time on the Bennett and Cooper Vein?

86 A. 70, 60, 50 and 110.

Q. What is the greatest and least thickness of the barrier pillar left by the Plymouth Coal Company on the South side of the Bennett and Cooper Vein?

A. The workings that are over on the Parrish Coal Company.

Q. What is the greatest thickness that is left?

A. About 110 feet, that is the greatest.

Q. The Parrish Coal Company are mining the coal in the Bennett and Cooper Vein on the south side of this Dodson property?

A. The Lance #11 mines on the south side.

Q. What is the width of the barrier pillar left on the south side in the Bennett and Cooper veins?

A. 190, 75 and 60.
Q. Is sixty feet the least?
A. Yes.
Q. What is the thickness at the point where the Plymouth Coal Company have come over into the Bennett and Cooper?
A. Seventy to one hundred and twenty.
Q. What is the depth of the Bennett and Cooper Veins below the surface?
A. Four hundred feet.
Q. What is the depth of the Red Ash below the surface?
A. That goes down to about 850 feet.

H. S. SMITH called, produced, sworn and examined:

Q. You are a member of the firm of Smith & Welles?
A. Yes.
Q. Your firm are the engineers for the Plymouth Coal Co.?
A. Yes.
Q. How long have you been acting in that capacity?
A. As a firm, ever since the firm was incorporated, about five years, and individually I was engineer for them for a couple of years before that, since 1901 I think.
Q. Then since 1901, individually, and as a member of the firm, you have been acting as engineer for the Plymouth Coal Company?
87 A. Yes.
Q. The maps which Mr. Davis, mine inspector, has produced here, are maps which were prepared by you?
A. They are the maps which were originally made by Aikman and Auman, and have been added to by us. The additions from year to year have been put in by myself individually, or by the firm. You will notice that the name is on in the first place, Aikman & Auman, they were engineers for the Company for a while, before we were.
Q. Look at plaintiff's Exhibit #1, this black line runs all around the property around this Red Ash Vein, what does that indicate?
A. The land line between the various ownerships.
Q. What is this space between the land line and the red line that runs irregularly in shape all along the line?
A. It represents solid coal.
Q. In other words that represents a pillar of solid coal extending along the boundary line of the adjoining property owners?
A. Yes.
Q. Look at Plaintiff's Exhibit #2, what is the black line that extends all around this Ross Vein?
A. Same as Red Ash.
Q. What is this blue line that runs almost parallel with that black line?
A. The limit of the workings in the Ross Vein.
Q. What is the space between the black line and the blue line?
A. It represents coal.

Q. What is the red line which extends all around the Ross Veins between the blue and black boundary line?

A. I presume it was a line for barrier pillar.

Q. Then that red line on this map indicates the line of the barrier pillar of the Ross Vein on the side of the Plymouth Coal Company?

A. It represents a barrier pillar.

Q. All that space between the black line and red line is solid coal?

A. Well, practically, yes.

88 Q. Excepting in certain instances where the blue line gets beyond the red line?

A. Yes.

Q. I show you plaintiff's Exhibit #3, what is this black line that extends all around this Bennett and Cooper Veins?

A. That is the boundary line between property ownership.

Q. What is that space running parallel with that line between that boundary line and an irregular boundary line?

A. Solid coal.

Q. That represents a barrier pillar between the Bennett and Cooper Veins?

A. Yes.

Q. In the Bennett and Cooper Vein and in the Red Ash Vein I notice on your maps, pink coloring, what does that indicate?

A. That area previously worked out has been flushed with culm.

Q. Do you know whether they are flushing now in the Bennett and Cooper Vein?

A. The last time we were in there they were.

Q. When were you in there?

A. July, 1909.

Q. Are they flushing in the Red Ash Vein?

A. Yes, were when we were last in there.

Q. Are they flushing in the Ross Vein?

A. I won't be positive.

Q. By flushing you mean culm that is washed into the mine with water, the water is allowed to dry off and the culm remains there?

A. Yes.

Q. There is no mixture in the water or in the culm, nothing except culm and water?

A. Culm and water and broken up slate.

Q. There is nothing flushed back in there to make that culm concrete in any way, is there?

A. No sir.

Q. So after the water is drained off, the culm remains in there, and the slate just as it appears on the outside, dumped on the surface?

A. It is more solid than an ordinary culm bank on the surface, because by flushing in with water, and being a large percentage of smaller particles, it gets more firmly packed.

89 Q. As the water dries out, it is still culm?

A. Yes.

Q. That is not the support that solid coal is, is it?

A. No.

Q. The purpose of flushing this culm into this unmined area is for the purpose of mining out the pillars of coal that still remain in there?

A. Sometimes, it is one of the purposes.

Q. That is their chief purpose, is it not, to rob the pillars?

A. Largely, or to produce coal.

Q. In robbing the pillars, that will naturally let down the surface if enough robbing is done, will it not?

A. If there is no flushing, yes.

Q. Even if there is flushing, will there not be a subsidence to some extent?

A. Very slight.

Q. Won't there be a subsidence?

A. It depends upon how the flushing is done, what the nature of the strata above is.

Q. Do you know what percent of the pillars in the Red Ash Vein and Dodson Colliery are still remaining intact?

A. Practically everything, there is hardly a pillar touched in the Red Ash Vein.

Q. They contemplate touching them at this time, or in the near future?

A. There has been no robbing of pillars in the Red Ash Vein.

Q. What percent of the coal has been worked out in the Red Ash Vein?

A. Between 50 and 55 percent.

Q. What is the average depth of the Red Ash Vein below the surface?

A. I will give you the depth of the Red Ash Vein with relation to the surface at the shaft, that is practically 550 feet above tide. At the top of the plane, at the line between the Lehigh & Wilkes-Barre and Gaylord Colliery, the Red Ash Vein is 400 feet lower than the surface at the shaft, or 150 feet above tide, and at the bottom along at the river, it is minus 302, which would be 852 feet below
90 the surface at the shaft.

Q. So then the thickness of the strata above the Red Ash Vein varies from 400 to 850 feet about?

A. Yes.

Q. What is the nature of the soil in that strata?

A. I cannot give you a complete section of the intervening strata here, I possibly have some bore hole records which will come—which will give it, but there are a number of intervening veins where it is deeper, there are more veins and sand stone, slate and other rock, there is not a great deal of soil or surface on it anywhere.

Q. What is the thickness of the Red Ash Vein?

A. About 22 ft.

Q. What is the character of the vein?

A. The vein is somewhat friable, a distinct vertical fracture.

Q. What is that?

A. Well, you know what distinct is, don't you, and what vertical

fracture is, it is that when you break the coal, or subject it to extremely heavy pressure, it will show a tendency to splinter vertically.

Q. Or in other words, crush?

A. Yes.

Q. At least 60 per cent of the coal in the Red Ash Vein has been mined out, you say?

A. No, sir, I didn't say that.

Q. What did you say?

A. I think from fifty to fifty-five.

Q. What is the area of the workings in the Red Ash Vein, I am speaking now of the Dodson Colliery?

A. I can't give you the acreage.

Q. Can you give me some idea as their engineer?

A. I can give you an idea, there is somewhere around 150 acres.

Q. That Red Ash Vein is being worked the whole entire vein?

A. No sir.

Q. What portions not been worked, or not now being worked?

A. I cannot give you just what, but any place marked partly closed, but not entirely closed, is still working, any place that has a solid line across the face is not working, and has been

91 stopped.

Q. This space in here which is the same color as the white, indicates solid coal or pillars?

A. Yes.

Q. They are left standing for the surface support?

A. Yes, they are left standing in the process of mining, they are intended to be taken out at some time, there are reasons why different places are left, sometimes the coal is somewhat inaccessible on account of pitch or fault, and in other places I don't know why this has not been mined.

Q. Those loose spots are left here for the surface support of this colliery?

A. Originally they were left as a matter of protection, the property was worked out with the idea of leaving certain blocks to stop the possibility of a squeeze.

Q. That is the purpose of these blue spots which we call pillars?

A. To prevent a squeeze, yes.

Q. You say then, they have not been mining the pillars in that mine; let me call your attention to this part of the map, what do these lines indicate?

A. There has been a skip taken off of there.

Q. What do you mean by that?

A. Simply taken out a narrow slice of the pillar; that runs from three to eight feet probably.

Q. Then they did take a slice off of some of these pillars, didn't they?

A. Yes.

Q. What thickness?

A. From three to eight feet.

Q. Didn't they come back again and take another slice off this pillar?

Objected to.

By Mr. JONES: The purpose of this question is to show by Mr. Smith, who is the Engineer for the defendant Company, that they have been mining some parts of the pillars that have been left standing for surface support, and were mining at the time the pre-
92 liminary injunction was awarded in this case, these pillars; it is for the purpose of showing an intention upon the part of this defendant Company, to mine, not only the pillars intended for surface support, but also to mine the barrier pillar extending along the boundary adjoining the Lehigh & Wilkes-Barre Coal Company property.

This is objected to as immaterial and irrelevant, the only question at issue here being as to whether or not the Plymouth Coal Company shall be required to leave a pillar—a barrier pillar—between its property and the adjoining property of the Lehigh & Wilkes-Barre Coal Company

Q. I call your attention to this red line on the Westerly side of the map, what does that indicate?

A. The line of a rib.

Q. What do you mean by that?

A. That indicates the position of the edge of the coal, on one side of that is——

Q. Then the coal has been removed at that—the coal has been removed out of that solid pillar of coal?

A. No, no coal removed from that, the coal is removed from the chamber.

Q. And reduced the thickness of that barrier pillar at that point?

A. Yes, it naturally lessens the thickness of the pillar.

Q. What is the thickness of the coal in that space that has been removed?

A. It depends upon what you mean by the barrier pillar.

Q. What is the width of that strip of coal that has been mined there in that barrier pillar?

A. There is no barrier pillar indicated there.

Q. Do you notice where my pen attracts your attention on this map?

A. Yes.

Q. What is the thickness of that white space between the red line and the pink?

93 A. Twenty-one feet.

Q. When was that mining done?

A. I cannot tell you.

Q. When was that extension made on the map?

A. I don't know, any time it may have been since 1901

Q. Have you any means of knowing when that was made?

A. Yes.

Q. Will you find it, and let me know?

A. Yes.

Q. Was it made recently?

A. I don't know.

Q. When were you in those mines yourself?
A. I cannot tell you.
Q. Can you give me some idea?
A. Well, I have been in possibly within eighteen months, I could not give you the definite date.
Q. I call your attention to this notch, when were you up in these workings?
A. I cannot give you the date, I was in there, I- was when they were started, and a number of times after that.
Q. Were you in there at your last survey?
A. No.
Q. What were the conditions of things in that notch when you were last in, as regards to caves?
A. I saw none when I was in there.
Q. Do you know that this section of the Red Ash Vein has caved in?
A. I never saw any caves.
Q. Did you see any black damp there?
A. No sir.
Q. Any indications of it?
A. No sir.
Q. Then you want to go on record, as the engineer of this Company, that you have not been in this section so long as to know that this section of the mines has all caved in and filled with black damp?
A. I have not seen caves or black damp in there.
Q. Do you mean to say the last time you were in the Red Ash workings eighteen months ago, that you were up in these workings?
A. I don't say just when it was I was in those workings, and I will say this, that it has been probably four or five years since I went completely through that mine on a posting, since that time our employees have made the actual mine surveys, and there
94 has been no occasion, except when I was called upon by Mr. Davies or other officials of the Company, to make some special examination, to go into the mines.
Q. Then practically the data from which this map has been built up, is information which has been obtained from your employés?
A. Very largely.
Q. You don't profess to have much knowledge, or personal knowledge of it?
A. I have occasion to check over their work and see that it is done correctly.
Q. All the checking up you do is to take the map and take the sruveys as made by them, and see that they make the extensions properly, as taken by them?
A. Yes, and have means of proving that their work is correct.
Q. Does Mr. Welles go into the mines once in a while?
A. About as I do.
Q. Very seldom you gentlemen go into the mines?

A. We do not do transit work in the mines.
Q. Do you know where the east side slope is in the Red Ash?
A. Yes.
Q. When were you down in the foot of the slope?
A. I can give you the dates.

Objected to.

By Mr. JONES: I propose to show by the witness on the stand as the Engineer of the Company, if he knows, that at the foot of the east slope that the mines as caved in are full of gas and water, and unable to work at the present time. The purpose is to show the conditions of that colliery as they now exist, to show that the mines are caving in, that there is a gradual substance, and to show that any disturbance of this solid coal or barrier pillar which now runs along the boundary line will result in crushing that
95 barrier pillar, and affect the workings of the Lehigh & Wilkes-Barre, crushing the barrier pillar on their side, and endangering the lives of the employes in both operations.

A. (Further answer.) Not from my own observations.

Q. When were you down to the foot of the slope last?
A. I cannot tell you that.
Q. About how long?
A. May be two years since I was down there.
Q When were you down to the foot of the west slope?
A. As far as dates are concerned, you might as well omit that, I can't give you the definite date of any visit to the mines at any time since I have been connected with it, except by reference to other notes which I have not with me.
Q. What were the conditions of the mines at the foot of the west slope when you were last in there?
A. The workings were in very fair condition.
Q. Did you see any indication of caving or settling?
A. There were places where the top coal had come down.
Q. Tried to hug the bottom coal?
A. No sir.
Q. What do you mean then?
A. The top coal was not adhering to the roof, and had dropped in certain places along the gangway. Only the bottom benches had been mined, and the top coal did not adhere to the roof above.
Q. In other words, they came apart?
A. Yes.
Q. You say the top coal was working there, what effect is that?
A. I said the top coal had come down in places along the gangway.
Q. What effect would that have on the pillars?
A. Nothing.
Q. Wouldn't it weaken them?
A. No.
Q. What effect would it have on the roof?
A. It depends.
Q. What effect would it have?

Objected to.

Q. Do you know what area in the mines that caving
96 covers?

A. No. Our roof distances at the time the surveys were made would indicate.

Q. Is it not a fact now, that you have trouble locating your stations in that mines, owing to the frequent squeezes that change your stations in the colliery?

A. I haven't been in since anything of that kind occurred.

Objected to.

Q. Have your employés made any complaints to you that by reason of caves and squeezes, of the squeezes, of the substance in that colliery, that the stations marked by them in making previous surveys, had been destroyed and could not be located?

A. They have made no complaints to me, I have heard of some of the places where stations would be out.

Q. What would be the cause of that?

A. That that particular station had dropped out, that is frequently the case.

Q. By reason of what?

A. Sometimes it is only just a scale, sometimes it is more. It is a very frequent occurrence for stations to drop out.

Q. Was it a frequent occurrence in this mine at any time?

A. It has been.

Q. What do you attribute that to?

A. I never attributed it to anything. In my experience of twenty-three or twenty-four years of making surveys in the mines, I have very frequently found stations out, both in the Lehigh Valley and all other collieries.

Q. Didn't you find it unusual in this particular colliery?

A. I never did.

Q. Isn't it because you haven't made them?

A. Well——

Q. You haven't made any original surveys for the last four or five years?

97 A. Not three years that I know.

Q. And Mr. Welles has not either?

A. I don't know how long since Mr. Welles made surveys, we both have made surveys in there.

98 Further hearing in the above entitled case, held in the office of B. R. Jones, Esq., on Thursday, October 28th, 1909, at 2 P. M.

Appearances:

B. R. Jones, for Plaintiff.
Col. W. C. Price, for Defendant.

DOUGLAS BUNTING, Esq., called, produced, sworn and examined

Q. What is your business?

A. Chief Engineer Lehigh & Wilkes-Barre.

Q. How long have you been their Chief Engineer?
A. Since 1904 or 1905.
Q. What was your business prior to that time?
A. Mechanical engineer.
Q. For the same Company?
A. Yes.
Q. How long have you been in the employ of that Company as engineer?
A. Fifteen years.
Q. Whether or not you have charge of all the maps and surveys of the underground workings of the L. & W.-B. Coal Co.?
A. Yes.
Q. Are they under your supervision?
A. Yes.
Q. You are familiar with the workings of the Nottingham?
A. Yes.
Q. And the Parrish and #12?
A. Not from personal observation with the Parrish or Dodson.
Q. You are familiar from personal observation with the workings of the Nottingham?
A. Yes.
Q. Were you present the day Mr. Davis was sworn when he produced the maps?
A. Yes.
Q. And you saw the maps of the L. & W.-B. operation?
A. Yes.
Q. Whether or not those were the maps prepared under your supervision?
A. Yes, they are.
Q. You saw the maps of the Plymouth Coal Co. that were
99 produced at that hearing?
A. Yes.
Q. And you saw that pillar of coal that was left along the division line adjoining the above properties?
A. Yes.
Q. And you heard Mr. Davis testify as to the width of that pillar at the different points?
A. Yes.
Q. And you know of your own knowledge the width of the pillar on the Nottingham side?
A. I know the width of the pillar on both sides, from surveys of the men, that were made under my supervision.
Q. You are familiar with the character of the coal in the Red Ash Vein?
A. Yes.
Q. And you heard at the last hearing the distance given of the depth of the various veins, the Red Ash, Ross, Bennet, Cooper and Five Foot Veins, below the surface?
A. Yes.
Q. Whether or not from your experience as a mining engineer knowing the thickness of the barrier pillar left by the Plymouth

Coal Co. and the L. & W.-B. Coal Co. adjoining their respective properties in Plymouth, knowing also the character of the Red Ash Vein, the coal, and the distance it lies below the surface, whether or not in your opinion that barrier pillar as it appears on the ground, is necessary for the safety of the employés of either mine, in the event of one or the other being abandoned?

A. It is.

Q. Whether or not in your opinion it would be dangerous to the employés of either mine to mine that barrier pillar on the Dodson side?

A. That is a question; I don't judge it would be any more dangerous to the employés of the Dodson Coal Co. to mine the barrier on their side than it would be to mine almost any other pillar.

Q. If the Plymouth Coal Company should mine the barrier pillar on their side of the boundary line, what effect would that
100 have on the pillar?

A. It would weaken the pillar.

Q. Whether or not that would be dangerous?

A. Yes, in the event of either colliery being flooded.

Q. If the barrier pillar in the Dodson mine is mined and taken out, whether or not in your opinion it would be dangerous to the employés in the Nottingham, #11, or the Parrish Coal Co. in the event of the Dodson being abandoned?

A. Yes.

Q. Do you know anything about the surface over the Dodson mine subsiding?

A. Not in this locality, only up on the hill.

Q. Have you heard of it subsiding on the right of way of the D., L. & W.?

Objected to.

A. Only from Mr. Davis's testimony.

Q. You have no personal knowledge?

A. No sir.

Q. Whether or not in your opinion that barrier pillar, as it now remains there on both sides of the division line, should remain there as a safety pillar for the lives of the men in either one of these various collieries in the event of the Dodson being abandoned?

A. Not necessarily, the entire barrier as it now exists, but the barrier should not be encroached upon, that is, at the present there are some parts of the barrier which are undoubtedly large, unnecessarily large, but that is only a few places.

Q. Would that be on the Plymouth Coal Company side?

A. Yes, and some on the other. I am not referring now to the Red Ash.

Q. I am speaking about the Red Ash Vein, whether or not in parts of the Red Ash Vein that barrier pillar ought to be encroached upon for any distance by either one of the collieries?

A. No. The barrier on the Plymouth Coal Company side is maintained at practically uniform width, and could not have — encroached upon without weakening the barrier at that point.

101 Q. Whether or not in your opinion the barrier as it now exists on the ground in the Ross Vein, ought to be encroached upon in the Dodson?

A. The barrier in the Ross is also mined to a uniform width, and should not be encroached upon.

Q. Whether or not the encroaching on that barrier pillar on the part of the Plymouth Company in the Ross and Red Ash Veins would endanger the lives of the employés in the Nottingham and #11?

A. In the event of the Dodson Colliery being abandoned? It would where we have established the pillar by our own workings. There are a number of points in both of these veins wehere we have not mined up to the barrier, which we have established on our side of the line, consequently if the Plymouth Coal Co. should go in at those points and mine to their property lines, it would simply be up to us to leave on our side the additional barrier which they would take out.

Q. Whether or not the Plymouth Coal Company in the Red Ash in the Dodson mines have mined up in all instances to the boundary line of the barrier pillar as established by the two companies?

A. Yes, practically so.

Q. And in some places they have encroached?

A. Yes.

Cross-examination:

Q. When has any line been established in any of these barrier pillars?

A. The line of the barriers?

Q. You just made a statement that the Plymouth Coal Company had mined up to the line that had been established.

A. Yes, that is a fact.

Q. When was there a line ever established?

A. There was never any line or pillar agreed to between the two Companies in writing, but there was, as I understand it, a sort of a verbal agreement or understanding between the L. & W.-B. and the Plymouth Coal Company, possibly in 1896 or 1897, it was

102 agreed that certain width of pillars should be agreed upon, and if you will examine the tracings of the Plymouth Coal Co. you will see on a number of their tracings, a pillar indicated with a red line, and a blue line, indicating the pillar line and the workings of the Plymouth Coal Company have been carried up to that line.

Q. Where are these maps?

A. I saw the tracings here at the last hearing.

Q. How do you know those lines were lines established for the purpose of barrier pillars?

A. That is evidence of it, because the workings are carried right to that line.

Q. Is there anything on the map to indicate that fact?

A. Only the fact that the workings had been carried to those lines.

Q. Nothing about an agreement, is there, on the map?

A. Nothing to indicate an agreement except that the workings have been carried to that line, that shows that they recognize the barriers.

Q. Is there anything on your records to indicate that the line had been established by agreement?

A. Yes, in my office I have on the records, indexed, the pillars to be left between the Dodson and Lehigh & Wilkes-Barre.

Q. As a matter of fact, are you willing to swear, here now, that that line was established between the Companies?

A. I cannot swear to that, because I don't know anything about the agreement, it simply appears that way to me.

Q. It appears on the tracings, lines which you presume are taken as established lines?

A. Yes, on the tracings.

Q. There is nothing on that tracing that it was done by any agreement?

A. Nothing on the tracings reciting any agreement, and I don't think there was any written agreement made, but I think
103 there was a verbal agreement.

Q. How do these veins pitch?

A. Pitch to the south.

Q. Then the veins in the Dodson mines pitch toward your property?

A. Yes.

Q. And if the Dodson Coal Company's property were to be abandoned, there is nothing to prevent your taking out all the coal without injury to your employés?

A. That is a question—by the mining of that barrier you might induce a squeeze which could carry over our workings.

Q. Have you ever been through Plymouth yourself?

A. Yes.

Q. Have you ever noticed any subsidence in Plymouth, from workings in the Dodson Coal Company?

A. Yes, on the Nottingham side of the property, on the hill.

Q. Any houses on that part of the property?

A. Yes.

Q. How close to the line was it?

A. Not close to the boundary line.

Q. How great a subsidence was it?

A. That I don't know.

Q. You notice- it yourself, or was your attention called to it?

A. I heard about it, and walked up there to see it.

Q. It is quite probable, is it not, that the Dodson mines will be mined out within a few years?

A. That I don't know, as I have not been in their mine, I don't know just what the condition is as to the workings.

Q. Give us your best judgment?

A. From my judgment the colliery might operate ten years.

Q. How much longer do you suppose they will be able to mine the Nottingham property?

A. I presume they will mine there over twenty years.

Q. Then in case the Dodson mines are abandoned in from five to ten years from now, is it not possible for the Lehigh & Wilkes-Barre to mine that barrier pillar out, without danger to their own employés?

A. I could not say that, it would be a doubtful proposi-
104 tion.

Q. They will mine the rest of the coal in their property will they not?

A. It is a question of how much pillar coal they ever mine.

Q. What would prevent you from mining out the barrier pillar if it is left in the same condition it now is?

A. We would not mine into that pillar after the Dodson is abandoned, because the Dodson will be filled with water, and it will not be safe.

Q. Can't you take care of the water that comes into your property?

A. Yes, by tapping it.

Q. Do you expect to leave all the pillars in the Nottingham as thick as this barrier pillar is?

A. No indeed.

Q. What is to prevent you from mining through into the Dodson property, and getting out this pillar on your property?

A. The principal objection to mining that barrier would be the liability of carrying the squeeze over from this Dodson territory on to ours.

Q. Would the same results happen if you mined out the coal under your property?

A. No.

Q. Why not?

A. Because we are leaving our safety pillar.

Q. But not all through your mines of that same thickness?

A. Yes, and thicker.

Q. All through your mines?

A. Yes.

Q. How thick is the barrier pillar between your property and the Dodson mines and the Ross Vein?

A. I have forgotten that, it may be over a hundred feet.

Q. All the way around the property?

A. Practically so.

Q. How thick is the barrier pillar on the Red Ash Vein all around the property?

A. That varies.

Q. What is the smallest thickness?

A. I should judge a hundred to a hundred and twenty-five feet.

105 Q. Are all the pillars in the Nottingham mine and Red Ash Vein at the present time from one hundred to one hundred and twenty-five feet in thickness?

A. We have lots of pillars that are more than that.

Q. And a lot that are less?

A. Yes, some.
Q. Are all the pillars in the Nottingham mine and the Ross Vein one hundred feet in thickness?
A. No.
Q. Why can't you mine this barrier pillar out then, later on, and leave this pillar of less thickness?
A. I didn't say it could not be mined.
Q. What did you say?
A. I said the danger in mining it would be the liability in squeezing.
Q. Could you not mine the entire pillar and leave safety blocks?
A. Yes.
Q. Could you not mine chambers all along that pillar?
A. Yes.
Q. Without injuring the safety of your employés?
A. I would not recommend mining any of that barrier pillar as it now exists, without first protecting our workings from any liability of squeezing.
Q. I am referring to a period say ten years from now, when the property of the Plymouth Coal Company has been abandoned would you not be able to mine along those barrier pillars without injuring the safety of your employés?
A. Provided our workings were properly strengthened.
Q. Could they not be properly strengthened?
A. Yes.
Q. Could not the water be taken care of?
A. Yes.
Q. Is it not possible for the Lehigh & Wilkes-Barre several years from now, to purchase that property, and get all the coal out of the barrier pillars?

Objected to.

A. I should say not.
106 Q. Why not?
A. Because the barrier remaining on the Dodson side is so small, and the property will be so thoroughly exhausted that the percentage of coal which might be minable from the *visiting* barrier on the Plymouth side will be very small.
Q. Could you not get the coal out from your side?
A. That is what I refer to.
Q. If the Plymouth Coal Company abandoned their mines in the next five or six years, you will never take coal from their barrier pillar?

Objected to.

A. We certainly do not contemplate doing so.
Q. Will it not be possible for you to take out the barrier pillar on your side of the colliery, even though the Plymouth Coal Company abandon their property in the next five or ten years?
A. That would be possible, to take out a limited amount in the Red Ash Vein.

Q. Why not would it be possible to take out a very large amount, and protect the property by artificial support?

A. The more artificial support you put in, naturally the more coal you can take out.

Q. Has not much property been supported by artificial support in mining properties in the last few years?

A. Considerably, yes.

Q. If the property of the Plymouth Coal Company were to be abandoned, and tunnels made through the barrier pillars, the water would drain down into the mines of the Lehigh & Wilkes-Barre, by their own pumps, could it not?

A. We would have to increase our pumping facilities.

Q. It could be taken out by your own pumps, could it not?

A. No, we would have to increase our pumping capacity.

107 Q. You could pump that whole property from your own property?

A. From our workings it could be pumped out; we would have to increase our pumping facilities.

Q. You have mined up very close to the Dodson line in your property on two or three of the veins, have you not?

A. Yes, we have mined rather close in a number of places.

Q. Have you made an estimate of the amount of coal that would be left in these barrier pillars, if this injunction is sustained?

A. I have made an estimate of the quantity of coal in the pillars, but I have not it with me.

Q. Can you give me any idea how much it is?

A. No.

Q. How much coal is there now left in the barrier pillar between the Lehigh & Wilkes-Barre and the Dodson property of the Plymouth Coal Company, on the Plymouth Coal Company side?

A. Several hundred thousand tons.

THOS. R. EVANS called, produced, sworn and examined:

Q. How old a man are you?

A. 67.

Q. What is your business?

A. Superintendent of the Parrish Coal Company's mines.

Q. You have charge of the underground workings?

A. Yes, of the Parrish Coal Company.

Q. How many years have you been there?

A. 25 years.

Q. How many years have you worked in the mines?

A. About 50.

Q. You have been employed in the Parrish Colliery for twenty-five years?

A. Yes.

Q. In what capacity?

A. Foreman, Inside Superintendent, and General Superintendent.

Q. You have been in the Dodson Colliery?

A. A few times, quite a long time ago

Q. How many men are under your employ in the Parrish Colliery?

108 A. Four hundred, inside.

Q. What veins do you work in that colliery?

A. The Bennet and Cooper and Five Foot.

Q. Have you ever been in the Nottingham Colliery?

A. Yes.

Q. Did you ever work there?

A. Yes, as Assistant Foreman, there for years.

Q. For how many years?

A. I think fire boss and inside foreman for about five years.

Q. What veins did they work in the Nottingham while you were there?

A. The Red Ash, and just starting on the Ross.

Q. Have you been in the Nottingham Colliery recently?

A. Yes.

Q. How lately?

A. About a year and a half ago.

Q. You are familiar with the barrier pillar, are you not, in the Red Ash and the Ross and the eBnnet and Cooper and Five Foot Veins, adjoining the Dodson Colliery?

A. Yes.

Q. In the Parrish Coal Company's operations are you familiar with them, from seeing them on the ;round?

A. Yes.

Q. The Nottingham workings in the Red Ash, whether or not those workings are deeper, lower down, than the Dodson operations?

A. Yes.

Q. How does the vein pitch?

A. Down south.

Q. From the mountain to the river?

A. Yes, under the river.

Q. How near to the river does the boundary line between the Lehigh & Wilkes-Barre and the Plymouth Coal Company operations run?

A. To the lower, to low water mark of the river, of the Plymouth Coal Company.

Q. All the operations of the Nottingham and the L. & W.-B. are under the river?

A. Yes.

Q. Whether or not you have ever seen any indications of the surface sinking or subsiding in the Dodson operations?

A. Up on the hill, below Shawnee Avenue, and on Shawnee Avenue.

109 Q. Whether or not you have seen indications of the surface subsiding in the neighborhood of the D. L. & W.?

A. Several years ago, several feet.

Q. What is the cause of it?

A. Big squeeze in the Dodson, squeeze in the Baltimore Vein.

Q. You are familiar with the pitch in the Ross, the Red Ash, the Bennet, Cooper and Five Foot?

A. I am familiar not in the Dodson.

Q. You are familiar with the character of the coal in each of these veins?

A. Yes.

Q. And you know the depth of the coal in each of them?

A. Only what I am told, the Red Ash is on the southern boundary of the Dodson, between 800 and 900 feet below the surface.

Q. You heard Mr. Davis and Mr. Smith, the Engineer, both testify at the last hearing?

A. Yes.

Q. And you heard them give the thickness of the various veins and the distance they lie below the surface?

A. Yes.

Q. You heard them also testify as to the thickness of the barrier pillar—the maximum thickness, the minimum, and the medium thickness, did you not?

A. Yes.

Q. Whether or not from your experience as a miner, a foreman and superintendent in these operations for many years, twenty-five to fifty years, whether or not in your opinion it would be dangerous to the employés in either of these mines—the Nottingham, Parrish or #11, for the Plymouth Coal Company to mine the barrier pillar in the Dodson colliery?

A. I believe it would be dangerous.

Q. Why do you think so?

A. Because they are working under that river and there is so much thickness of sand on top of the rock under that water, and if a squeeze was carried over from the Dodson to the Nottingham, it might drown out a lot of the men in the Nottingham shaft.

110

Q. Whether or not there would be danger of bringing in the river?

A. Yes, through fissures.

Q. Have you ever known in your experience as a mining man, of a squeeze which travelled over a large area of workings?

A. Yes.

Q. And over large pillars?

A. Yes.

Q. Give me some instances?

Objected to.

Q. What effect would the mining of that barrier pillar have?

A. Weakening the pillar.

Q. What effect would that have on the mining operations, to weaken the pillar?

A. The rocks always break at right angles to the pitch, consequently if the pillar was weakened, a squeeze might come on, the rocks would break over that pillar and encroach on the workings below.

Q. If the Dodson operation should stop work, and they should abandon those operations whether or not it would be in your opinion, dangerous to the employés of these collieries, the Nottingham, #11 and Parrish, to have that pillar encroached upon or mined out?

A. Yes, it would weaken the pillar if they abandoned their operations, and the same become filled up with water.

Cross-examination:

Q. Has there ever been any subsidence on the Lehigh & Wilkes-Barre, in Plymouth?

A. Yes.

Q. And it is possible there might be a subsidence over the river of the L. & W.-B. whether this pillar is mined or not?

A. Yes.

Q. Is it possible they will work that pillar out?

A. That is to their object, they can work it very close without taking the river down.

111 Q. Is this pillar all under the river?

A. Yes, the L. & W.-B. so far as my knowledge goes it is all under the bed of the river.

Q. The barrier pillar on the west boundary is not under the river?

A. No sir.

Q. How long ago did the D. L. & W. raise the tracks that you spoke of?

A. A few years.

Q. That is not due to subsidence?

A. Yes.

Q. Have they not raised the tracks all through the Borough of Plymouth?

A. They went down, and they are put on the same level as when they went into Plymouth, but not all through.

Q. How far?

A. Down to the gas house, and from the gas house to the Parrish breaker, and from the Parrish breaker to the Dodson breaker, and then from the Parrish breaker up to the Dodson breaker.

Q. Has that been due entirely to subsidence?

A. Yes.

Q. How long ago did they raise the tracks?

A. About twenty years since they started around the Dodson, or twenty-five years since the subsidence went down to the Baltimore Vein.

Q. That is one of the upper veins?

A. It is above the Ross.

Q. When was the last time they raised the tracks?

A. I don't know, they are raising around the Parrish this year.

Q. When was the last time they raised the tracks over the Dodson?

A. I don't know.

Q. Five years ago?

A. I don't know.

Q. Ten years ago?

A. I don't know. Mr. David and Mr. Phillips can tell you that better than I can.

Q. How wide is the river down there?

A. Between 800 and 1,000 feet.

Q. How far below water mark is this barrier pillar?

A. It is about to low water mark, I should think.

112 Q. Are all the pillars of the Lehigh & Wilkes-Barre property two hundred feet wide?

A. No, some weak spots here and there.

Q. Would it be possible for the Lehigh & Wilkes-Barre, when the Plymouth Coal Company is abandoned, to take all the coal out of the barrier pillar?

A. They could not take it without injuring the lives of the men.

Q. Could they tap the water from the workings of the Plymouth Coal Company and pump it out themselves?

A. Not without danger to their men. That body of sand is in the water.

Q. Could they chamber these pillars the same as the rest of the pillars?

A. They would have to leave four times as much coal as they take out.

Q. Where they are not working under the river, do they leave pillars as large as that?

Objected to.

A. Yes, they leave larger pillars, 300 foot pillars; in one spot there is 300 feet, and then 250 feet in others, and then it goes down.

Q. Could they not, by using artificial means of support, take out the barrier pillars?

Objected to.

A. They might go to this expense and fill the whole thing in, then they could.

Q. Has it not been done?

A. No, we cannot get enough fill.

Q. Have any properties in the Wyoming Valley been done?

A. Not to my knowledge.

Q. Don't you know of any collieries where artificial methods have been adopted for preventing subsidence?

A. In our own colliery, we do some of it, but it would not hold up the river and the surface wash, if all the coal was taken out.

Q. Does not this barrier pillar on the west side run way up

113 above the river?

A. Yes, we are talking about the south side.

Q. I am talking about the east and west sides. Would it be possible to take a large amount of coal out of these barrier pillars several years from now, after the Dodson is abandoned, and the water is pumped out by the Lehigh & Wilkes-Barre?

A. Not without injuring lives under there, there is now only sixty or eighty foot pillars now.

Q. I am speaking of injuring the lives of the workmen in the Lehigh & Wilkes-Barre mines.

A. Not without danger of injuring, because that colliery even today is dangerous for the men to work in.

Q. Would it be more dangerous to the men working those pillars

several years from now than working in any other portion of the L. & W.-B.?

A. Yes, it is weakening all the time, and the more they take out of the coal, the more is the danger.

Q. Is that state of affairs in any portion of the mines?

A. No, because there is a pillar sustaining between the collieries.

Q. Is this not done in some of the properties?

A. Yes, and the whole thing is coming down, and many lives have been lost.

Q. What is to prevent the Lehigh & Wilkes-Barre from taking out the coal in this barrier pillar several years from now, leaving the same size pillars along the barrier as in any other portion of their mines that is not under the river?

A. The expense to- great to go after it.

Q. Won't they come up to the barrier pillar in a few years?

A. The workings are up to the barrier.

Q. In a few years from now why can't they go on and work those barrier pillars in the east and west?

A. They are too small that the expense to go after them will be too great for the amount of coal in that barrier pillar.

114 Q. Why can't they ten years from now?

A. The expense I say would be too great.

Q. Well five years?

A. Too expensive.

Q. Well three years?

A. Even today it is too expensive in some places.

Q. Are they not mining coal under the barrier pillars now?

A. They agreed verbally to keep between the pillars; they are within forty or sixty feet on the hill.

Q. What veins are you working?

A. The Baltimore.

Q. How near on the other veins are you working?

A. We are not working them.

Q. How near is the Lehigh & Wilkes-Barre to the barrier pillar now?

A. I don't know personally.

Q. When were you down in that property?

A. Not for eighteen months.

Q. Can they provide now for coming back at that pillar a few years from now?

A. I claim it would cost too much money.

Q. You are not answering my question; can't they provide now so that they can come back at this pillar three or four years from now, without much extra expense?

A. It would cost too much.

Q. You are willing to swear that the Lehigh & Wilkes-Barre will never come back and work out that coal on the Red Ash Vein, between the property of the Lehigh & Wilkes-Barre and the Plymouth Coal Company, on the south side?

A. They can on the south side, because the pillar is so big, but

on the east side from what I know they cannot without too much expense.

Q. How about the barrier pillar on the west side of the Dodson colliery?

A. Not if that pillar is the same thickness as we have it on the Baltimore Vein; I don't know what the pillar is, except what I have seen on the map.

115 DANIEL R. DAVIS called, produced, sworn and examined:

Q. You live in Plymouth?
A. Yes.
Q. What is your business?
A. Mine foreman.
Q. For whom?
A. The Plymouth Coal Company.
Q. In what colliery?
A. In the Dodson.
Q. How long you been a mine foreman there?
A. Seventeen years.
Q. How long have you worked in the mines altogether?
A. I served eleven years as Assistant, and seventeen years as Mine Foreman.
Q. You have been twenty-eight years in the Dodson Colliery as Assistant Foreman or mine foreman?
A. Yes, twenty-eight years in the Dodson, between the two; it was down then.
Q. What do you mean by that?
A. Caved in.
Q. How many places are working in the Red Ash Vein?
A. About thirty-two or thirty-four.
Q. Are those chambers?
A. No, they are more robbing chambers than chambers.
Q. Of that thirty-four places, in how many are they robbing pillars?
A. They haven't got any solid.
Q. You have no solid coal much then in the Red Ash?
A. No.
Q. Your chief operation in the Red Ash Vein is robbing pillars at the present time?
A. We have blocks here and there, and we are taking out part of a block and putting culm in, and when one place is finished we turn into another block, and put culm in, and then take another block.
Q. What you mean by a block is a pillar of coal?
A. Yes, left there for safety, and get more coal out.
Q. Those safety pillars are what you call the blocks?
A. Yes.
Q. And you are taking out those blocks and flushing back the space with culm?
A. Yes.

Q. And you are doing that for the purpose of taking out the coal that is in those safety blocks?

A. Yes.

116 Q. You know where the barrier pillar is between the Lehigh & Wilkes-Barre and the Plymouth Coal Company?

A. Yes, I know them all.

Q. You were told to leave them there as barrier pillars?

A. I kept thirty feet there for a couple of years, then I was told by Mr. Davis to keep sixty feet.

Q. Mr. Davis was the Superintendent?

A. Yes.

Q. And he told you to leave a sixty foot pillar?

A. Yes.

Q. And then you jumped back from thirty to sixty feet?

A. Yes.

Q. And lately you have been trying to get in there to mine some of that thirty and sixty feet away?

A. I don't know who the coal belonged to.

Q. You were in there trying to get it out?

A. Yes.

Q. And you were going to skin out all that coal, that thirty and sixty feet?

A. I don't know that, we thought to go to a corner that was sixty.

Q. Trying to get down to the corner of your property where there was a sixty foot pillar?

A. Yes.

Q. Going in there to skin off thirty feet of that sixty?

A. Yes, some of it, we were thinking to take some of it.

Q. How much of that did you get when you were stopped?

A. We didn't get none.

Q. Who stopped you, the mine inspectors?

A. No, Mr. Phillips told me to leave that be there till we see further.

Q. Who told you to go in after that?

A. Mr. Gilbert Jones, the Superintendent.

Q. He is the man who succeeded Mr. James B. Davis?

A. Yes.

Q. Look at this map, which is a map of your operations in the Red Ash Vein, do you recognize it?

A. Yes, I know it all.

Q. There is a cave in the Red Ash Vein in these operations, is there not?

A. Yes, we had some.

Q. Point out on the map where you had that cave?

A. Up there.

117 Q. In the northwest corner of your property you had a squeeze or cave in?

A. Yes.

Q. That is down entirely now, is it not?

A. No, not down to the bottom, but part of the way down.

Q. Almost all the way to the bottom?
A. Some places it is fifteen or twenty feet.
Q. What effect did the cave in this section have on the surface?
A. It dropped a little on High Street here, and then it moved one building a little about to one side.
Q. Did it shove it up?
A. It shoved it a little, but the Company fixed it.
Q. What effect did that squeeze have on Shawnee Avenue?
A. That is the place, that house
Q. It brought in the sidewalks?
A. No, twisted it a little bit.
Q. Show me on this map what other portions of this colliery wherein you had caves?
A. Here in the northeast portion, coming down by the inch gradually, we had a cave here.
Q. That is, you mean in the northeast portion of your property it is gradually coming down?

Objected to.

Mr. JONES: I propose to show by this witness that the pillars now in their colliery in the Red Ash Vein, including the barrier pillars, are not sufficient to support the mining operations at the present time, that they have had a large number of caves, that the surface is gradually subsiding, that they are at present mining out pillars or blocks used for safety support, and that the mining out of these safety blocks in view of the fact that the colliery is now gradually subsiding, injures the barrier pillars, and imperils the lives of the workmen in the operations of the Lehigh & Wilkes-Barre
118 adjoining.

Objected to, for the reason that this testimony is taken, under preliminary injunction restraining the Plymouth Coal Company from mining out its barrier pillar by the Mine Inspector under the act of 1891, and any testimony relative to the injury that may occur to the Borough of Plymouth or houses therein, is immaterial and irrelevant; and I further instruct Mr. Davis that he does not need to answer this question.

Mr. JONES: The purpose of this offer is not to show any damages to any particular property, but to show the conditions of the property there in general; that it is now dangerous at the present time, it is gradually coming down, and their method of mining there at this time is dangerous to the lives of the employés in the adjoining collieries.

Q. In the northeast portion of the properties there is a gradual subsiding?
A. It is coming down by inches.
Q. Whether or not this part which I indicate with my pencil on this map, whether or not that whole section is not filled with black damp?
A. From the corner marked A, in a straight line across to B.
Q. All the way up?
A. Yes.

Q. Whether or not it is possible for anybody to get into these workings at the present time?

A. Mr. Davis, the Mine Inspector, knows all about it, he knows, and I don't want to tell any lies.

Q. Is it not a fact now, Mr. Davis, that the eastern portion of this whole property extending from the northerly boundary line all the way down to the southerly boundary line, down to the river, is gradually subsiding and caving in?

A. Yes, pretty near all, all going together; there is no danger to lives because no people working in there now, but it is sinking
119 gradually;—that is where we get more coal.

Q. I call your attention to this point on the map, "2 West Slope," this is the point where a man by the name of Fisher was going for the coal?

A. Yes, trying to catch that big corner.

Q. And a few days after he went in there he was stopped working, and it caved in?

A. Yes, after Mr. Phillips told him to stop there.

Q. How much of that territory caved in?

A. Fifty or a hundred feet.

Q. Down to the curve here, west of the rock slope, whether or not all that territory is caved in?

A. Yes, it settled on top of the culm or rock or ashes.

Q. You cannot get in there can you?

A. No, not now, because it is full of culm. We had to fill it to keep the gas away.

Q. Is it not a fact that in this southeast portion of the Red Ash that it is all filled in with explosive gas and dangerous?

A. We cannot go there and see it.

Q. Why?

A. It is all caved in.

Q. You attempted to take the water out of that section?

A. We are leaving the water rise there.

Q. You tried to take the water out?

A. Yes, we took it a little lower.

Q. When you did that, you discovered that the gas came out of that section, and began coming up the slope?

A. Yes, some come there.

Q. Then you stopped?

A. Yes.

Q. And notwithstanding the fact that that property is gradually sinking down and subsiding, you are taking out those safety blocks?

A. Yes, we have to do that.

Q. To get the coal?

A. It is on them we are living.

120 Q. What effect would it have on the barrier pillar in the Nottingham colliery, if you were to mine out the barrier pillar on your side?

A. It would make it weaker.

Q. And that would naturally endanger the lives of the men on the other side?

A. Yes, if they didn't keep the pillar big enough.

Q. From your experience as an old miner, and experienced mining man, working twenty-eight years as a foreman and assistant in this colliery, and knowing the nature of the Red Ash Vein, its thickness, character of the coal, and the depth below the surface, whether or not if you were working in the Nottingham Colliery, you would consider it dangerous to mine out the barrier pillar in the Dodson Colliery, if that colliery was abandoned and filled up with water?

Objected to.

A. Yes, it would be dangerous for the Nottingham and No. 11.
Q. For the men in the Nottingham and #11?
A. Yes, they have only fifty feet in one place.

Cross-examination:

Q. Wherever you mine out these safety blocks, you are speaking of, you are flushing those places with culm?
A. Yes.
Q. What do you mean by flushing?
A. Running down the culm and ashes to fill the place up tight.
Q. That would prevent the surface from subsiding entirely?
A. Yes, it would sink a little.
Q. And then stop?
A. Yes.
Q. And a great deal of this territory that has subsided won't go down any further now?
A. After you get it filled, it may settle down five feet, that is go down by the inch.
Q. You put in more stuff than you take out, don't you?
A. Yes, we put in everything we can get?

121 Mr. JONES:

Q. When you do this flushing and the surface gradually comes down, if there is any solid coal there that will naturally crush?
A. Yes.
Q. What action will that have on the pillar, the fact that this surface is gradually coming down on the barrier pillar or any pillars in the mines?
A. It will leave a ridge over the solid.
Q. Will it splinter the pillars?
A. Yes.
Q. Won't it work out and crumble?
A. Yes.
Q. And won't that naturally weaken it?
A. Yes.

Mr. PRICE:

Q. If the water is tapped on the Lehigh & Wilkes-Barre side of the pillar, they can pump the water out themselves?
A. Yes.

Q. That would prevent damage on their side of the barrier pillar?
A. Yes.

Mr. JONES:

Q. You mean if the water could run right through?
A. Yes.

Mr. JONES:

Q. But if a large body of water was held back, then that would be dangerous?
A. Yes.

122 I hereby certify that the foregoing mentioned witnesses were duly produced before, and sworn by, me and examined in my presence at the times and places above mentioned; that their testimony was taken down stenographically and afterwards reduced to typewriting by me and that the foregoing is a correct copy of said testimony.

MARY E. DEAN,
Commissioner Appointed by Court of Common Pleas of Luzerne County to Take Testimony.

Endorsement: In Equity—No. 16 Oct. T., '09—Com. of Pa. ex Rel. vs. Plymouth Coal Co.—Deps. on part of Pl'ff—Filed 22 Dec., 1909.

123 In the Court of Common Pleas of Luzerne County, October Term, 1909.

In Equity. No. 16.

COMMONWEALTH OF PENNSYLVANIA, upon Application of David T. Davis, Inspector of Mines of the Ninth Sub-district of the First Anthracite Coal Inspection District of Pennsylvania, Plaintiff,

VS.

THE PLYMOUTH COAL COMPANY, Defendant.

Sur Bill, Answer, Replication and Testimony.

Opinion and Decree Nisi.

The Anthracite Mining Act of June 2nd, 1891, P. L. 176, is entitled, "An Act—To provide for the health and safety of persons "employed in and about the anthracite coal mines of Pennsylvania "and for the protection and preservation of property connected "therewith".

Section 10 of Article III of this Act reads as follows:

"It shall be obligatory on the owners of adjoining coal properties "to leave, or cause to be left, a pillar of coal in each seam or vein

"of coal worked by them, along the line of adjoining property,
"of such width, that taken in connection with the pillar to be left
"by the adjoining property owner, will be a sufficient barrier for
"the safety of the employés of either mine in case the other should
"be abandoned and allowed to fill with water; such width of pillar
"to be determined by the engineers of the adjoining property owners
"together with the inspector of the district in which the
124 "mine is situated, and the surveys of the face of the workings
"along such pillar shall be made in duplicate and must
"practically agree. A copy of such duplicate surveys, certified to,
"must be filed with the owners of the adjoining properties, and with
"the inspector of the district in which the mine or property is
"situated."

The bill avers that the plaintiff, being the mine inspector for the proper district, gave notice to the defendant company of a meeting to be held at which the said company was notified to instruct its engineer to be present and meet the engineer of the Lehigh and Wilkes-Barre Coal Company, the owner of an adjoining mine, for the purpose of determining the width of a barrier pillar to be left by the said two coal companies between their properties as required by the mining act; but that the defendant company refused to permit its engineer to attend such meeting, and, generally, refused to leave any barrier pillar between its workings and those of the Lehigh and Wilkes-Barre Coal Company.

The prayers are (1) for an injunction enjoining the defendant from working its mines or coal property adjoining the mines or coal property of the Lehigh and Wilkes-Barre Coal Company without leaving a barrier pillar of coal of the thickness or width of at least seventy feet in each vein, (2) requiring the defendant to file with the mine inspector a certified copy of a survey as required by law, and (3) for general relief.

To this bill the defendant has filed an answer admitting the plaintiff's averments of fact to be true, but (1) denying the necessity for such a barrier pillar and (2) averring that Section 10 of Article III of the mining act is unconstitutional.

125 I.

If the constitutionality of this provision be conceded for the purpose of discussion, and if the question of the necessity for any barrier pillar at all between these properties may be regarded as an open one, the decision of that question would seem to be committed by the statute to the tribunal of experts thereby constituted, viz., the mine inspector and the engineers of the owners of the adjoining coal properties. The purpose of the enactment is to secure the safety of the workmen in the mines. The law declares that "it shall be obligatory" on the mine owners to leave such a barrier pillar as the tribunal of mine experts referred to shall determine to be sufficient for that purpose. It is for them to fix its width. Until they say that none at all is needed for the safety of the men, the obligation imposed by the statute remains.

It might, perhaps, be well argued that the legislature did not

intend to impose upon the owners the burden of leaving a boundary pillar of unmined coal where it clearly appears to be unnecessary for the safety of the employees. If none at all were needed it would seem idle for the inspector and engineers to fix a width of, say, one foot, for the sake, merely, of literal compliance with the statutory obligation of leaving a pillar of some width. If, therefore, we may apply the maxim that the law does not require a vain thing, there is room for the construction that, in vesting in the inspector and engineers the power to determine how wide the barrier pillar should be to secure safety, the intent of the law making power was to also empower them to say, if such be the fact, that the safety of the men does not require a barrier pillar of any width at all. But, be that as it may, it is evident that the act does not warrant a mine owner in refusing to permit his engineer to participate in determining the question of the width of,
126 or the need for, a barrier pillar simply because he, the mine owner, does not consider one necessary. In our opinion, the law requires such a pillar to be left, unless the inspector and engineers, after due examination of the premises and consideration of the subject, determine that none is needed to secure the safety of the men employed in either mine in case the other should be abandoned and allowed to fill with water.

II.

The constitutionality of the boundary pillar provision of the act is attacked upon two grounds, (1) because it is said to violate Section 10 of Article I of the Penn-sylvania constitution, which provides that private property shall not be taken or applied to public use without authority of law and without just compensation being first made or secured; and (2) because it is claimed to be in conflict with the fourteenth amendment to the federal constitution, which provides that no state shall deprive any person of life, liberty or property without due process of law.

The defendant contends that, by requiring adjoining mine owners to leave a barrier pillar of coal between their workings, the act deprives them of a property right, (viz.—the right to mine such coal) without compensation therefor and without due process of law.

Both the right of eminent domain and the police power of the state are attributes of sovereignty. They are inherent rights of the supreme power, founded upon the social compact and essential to any form of government.

In our jurisprudence the right of eminent domain is defined to be "the power of the state to apply private property to public purposes on payment of just compensation to the owner". 10 Am. & Eng. Encyl. Law 1047. The provision for payment of
127 compensation, however, is no part of the power itself but a limitation upon its use imposed by the constitution. U. S vs. Jones 109 U. S. 513.

"The police power of the state," says Judge Orlady in Commonwealth v. Beatty, 15 Pa. Super. 5, 15, "is difficult of definition, "but it has been held by the courts to be the right to prescribe "regulations for the good order, peace, health, protection, comfort,

"convenience and morals of the community, which does not en-
"croach on a like power vested in congress or state legislatures by
"the federal constitution, or does not violate the provisions of the
"organic law; and it has been expressly held that the fourteenth
"amendment to the federal constitution was not designed to inter-
"fere with the exercise of that power by the State (citing Powell v.
"Pa., 127 U. S. 678; Powell v. Com. 114 Pa. 265). Its essential
"quality as a governmental agency is that it imposes upon per-
"sons and property burdens designed to promote the safety and
"welfare of the public at large. The principle that no person
"shall be deprived of life, liberty or property without due process
"of law, was embodied in substance in the constitutions of nearly
"all, if not all, of the states at the time of the adoption of the
"fourteenth amendment, and it has never been regarded as incom-
"patible with the principle, equally vital because equally essential
"to the peace and safety of society, that all property in this country
"is held under the implied obligation that the owner's use of it
"shall not be injurious to the community (citing Boston Beer Co.
"v. Mass. 97 U. S. 25) * * * (at page 17) 'The State still
"retains an interest in his (the wage earner's) welfare, however
"reckless he may be. The whole is no greater than the sum of
"all its parts, and when the individual health, safety and
128 "welfare are sacrificed, the state must suffer.' This declara-
"tion was adopted by the United States Supreme Court in
"Holden vs. Hardy, 169 U. S. 366, 42 L. Ed. 780, in validating
"a state statute which limited the employment of men in under-
"ground mines, smelting works, etc., to eight hours a day."

By the decision from which we have just quoted, it was held that the Act of April 29th, 1897, P. L. 30, forbidding the employment of adult women for more than twelve hours a day, etc., was not in conflict with the constitution of Pennsylvania nor with the federal constitution, but was a valid exercise of the police power in the interest of the public health, even though it referred to a particular class of the public, viz., adult women engaged in the kind of employment mentioned in the act, and even though it did indirectly restrain the employee's freedom of contract.

So also, in Commonwealth v. Brown, 8 Pa. Super. 339, it was said by Judge Rice (p. 351-2) that "In the exercise of the police power
"of the state, it (the legislature) may enact laws in the interest
"of public morals, and to protect the lives, health and safety of
"persons following specified callings, and thus indirectly interfere
"with freedom of contract"—i. e. with individual liberty and the right to acquire and use property. But, of course, such classification with reference to occupation must be reasonable and dictated by "a necessity springing from manifest peculiarities clearly dis-
"tinguishing those of one class from each of the other classes, and
"imperatively demanding legislation for each class separately that
"would be useless and detrimental to the others. Laws enacted
"in pursuance of such classification and for such purposes are,
"properly speaking, neither local nor special. They are general
"laws because they apply alike to all that are similarly sit-
129 "uated as to their peculiar necessities." Ayers' Appeal 122
Pa. 266, 281; Com. v. Gilligan, 195 Pa. 504, 510. The

point we desire to emphasize here is, that, to be a valid exercise of the police power in the interest of the public safety, a statute need not necessarily be applicable to the whole body of the general public, but may affect a specified class only. Thus in Holden vs. Hardy, 169 U. S. 366, it was said by our highest court, speaking by Mr. Justice Brown (page 393) that, "While the business of mining "coal and manufacturing iron began in Pennsylvania as early as "1716, and in Virginia, North Carolina and Massachusetts even "earlier than this, both mining and manufacturing were carr-ed "on in such a limited way and by such primitive methods that no "special laws were considered necessary, prior to the adoption "of the constitution, for the protection of the operatives, but, in "the vast proportions which these industries have since assumed, "it has been found that they can no longer be carried on with "due regard to the safety and health of those engaged in them, "without special protection against the dangers necessarily inci-"dent to these employments. In consequence of this, laws have "been enacted in most of the states designed to meet these exigen-"cies and to secure the safety of persons peculiarly exposed to "these dangers * * * In (states) where mining is the prin-"cipal industry, special provision is made for the shoring up of "dangerous walls, for ventilation shafts, means of signaling the "surface, for the supply of fresh air and the elimination of dan-"gerous gases, (etc., etc.) * * * These statutes have been "repeatedly enforced by the courts of the several states; their "validity assumed, and, so far as we are informed, they have been "uniformly held to be constitutional". Mr. Justice Brown then refers to certain cases where such laws were held to be con-
130 stitutional under the police power, and among them, to Com. vs. Williams, 8 Phila. 534, in which the late Judge Harding of this court held the mine ventilation act of March 3rd, 1870, P. L. 3, to be a constitutional exercise of the police power.

So also, in Chicago W. & V. Coal Co. vs. People, 181 Ills. 270, 54 N. E. Repr. 96, a provision in the mining act of that state requiring the mine owner to pay the fees for the inspection of mines by a state inspector was held to be valid and constitutional under the police power, though its effect was to deprive the owner of property, to-wit, the money required to be paid as fees. It was there said, as it might equally well be said in the case at bar, "The mining of coal is recognized as a dangerous and hazardous "business and is a productive industry of the greatest importance. "For many years in this state many thousands of men have been "engaged in that character of work and a proper safeguard of "their lives and health is a matter of so great interest and necessity "that no subject can be mentioned where there is a more positive "necessity for the exercise of the police power than in seeking "to subserve their safety. * * * (Speaking of the payment of "the inspector's fees) The expense thus incurred is imposed be-"cause of the peculiar dangers of the surrounding situation and "subserves not only the interest of the miners but alike protects "the mine owner; and hence the payment of the fee (in this case,

"the leaving of coal for a barrier pillar) can be properly imposed "upon the mine owner without violating any provision of the "constitution". That case was followed by Consolidated Coal Co. vs. People, 186 Ills. 134; 57 N. E. Repr. 880, where it was held that the same mining Act (which, in essentials, is similar to our own) did not deny to mine operators the equal protection of the laws nor take their property without due process of law in violation of the fourteenth amendment of the federal constitution.

131 Still closer in its facts to the case now before us is Maple v. John, 42 W. Va. 30; 32 L. R. 800. There, the mining act in question provided, inter alia, that "No owner or tenant "of any land containing coal shall open, or sink or dig, excavate "or work in any coal mine or shaft on such land, within five feet "of the line dividing said land from that of another person or "persons, without the consent in writing of every person interested in, or having title to such adjoining lands", etc. This provision was claimed to be unconstitutional as being an infringement of the right of private property. It was held to be a proper exercise of the police power and not unconstitutional in the respect claimed; the court saying—"This is no undue assumption of the "right to apply the police power to a subject which does not fall "within it; for regulations (on this and other subjects mentioned) "have long been recognized as wholesome and reasonable, and as "fit subjects for the exercise of the police power, as tending to "preserve the rights of the citizen and promote the welfare of the "commonwealth. The mining of coal is one of the largest industries carried on in the state. In mining, proper support and "ventilation are necessary * * * for the health and safety of the "miner engaged in a dangerous employment, and for that reason "the public welfare requires it * * * This rib of solid coal not "to be mined into by either of the adjoining owners was to be "contributed by each in equal parts for the mutual benefit of "each, for the protection of the surface, to secure independent "systems of ventilation, drainage and workings, and in aid of an "industry so great and widely diffused that the state as a whole "is interested therein * * * This regulation works no

132 "hardship on one for the benefit of another but is impartial, "just and reasonable, imposing a common burden for the "benefit of all such owners."

The police power is distinguished from the right of eminent domain in that the state, by exercising the latter right, takes private property for public use, thereby entitling the owner to compensation under the constitution, while the police power, founded as it is on the maxim "sic utere tuo ut alienum non laedas", is exerted to make that maxim effective by regulating the use and enjoyment of property by the owner, or, if he is deprived of his property altogether, it is not taken for public use, but rather destroyed in order to conserve the safety, morals, health or general welfare of the public, and in neither case is the owner entitled to compensation, for the law either regards his loss as damnum abseque injuria, or considers him sufficiently compensated by sharing

in the general (and, in this case, also the specific) benefits resulting from the exercise of the police power. 22 Am. & Eng. Encycl. Law 916, and cases there cited. For example, in the case at bar, the state does not take the coal in the barrier pillar and convert it to a public use, but leaves it in the ownership and possession of the adjoining mine owners The coal itself it not taken. The property right affected by the statute is not ownership, but use, of the material thing—the right to mine it out. Nor does the state take that right for public use. The act does not transfer the right to mine out the coal, from the owner to some one else, for the public benefit, but prohibits that right from being exercised by anyone—that is, destroys it, to prevent a possible calamity, to-wit, the flooding of mines, and to protect the lives of that class of the general public whose safety would be thereby endangered, and incidentally, to conserve the mine property of the owners themselves. In this latter aspect of the case the destruction of
133 the right to mine the coal bears some analogy to the destruction of buildings to prevent another sort of calamity,—a conflagration. True, in the latter case the disaster is imminent, while here it is uncertain; so that perhaps a closer analogy in that respect would be the statute law requiring fire escapes to be placed on certain structures in order to avert a possibly remote catastrophe. Such laws were held to be a valid exercise of the police power of the state in Fidelity Insurance etc. Co. vs. Fridenberg, 175 Pa. 500, 507-8

The enactment here in question does not authorize a taking of property for public use, is not an exercise of the right of eminent domain, and, therefore, is not unconstitutional because of failure to provide for compensation; but it regulates the use of tangible property,—the coal in the pillar—by requiring the owner to so use it (negatively by leaving it unmined) as not to injure the rights of others, or, in another aspect of the case, does not affect tangible property at all, but destroys an intangible property right (that of mining out the pillar coal) in the interest of the public safety. In either case it is, in our opinion, an exercise of the police power, justified by the circumstances, and not violative of either the state or the federal constitution.

By agreement of counsel this case is to be determined as upon final hearing, the depositions taken for use on motion to continue the preliminary injunction to be considered as evidence produced in open court on such hearing. In pursuance of this agreement of counsel, and upon admissions contained in the answer, and from the testimony, we make the following

Findings of Fact.

1. The plaintiff is the mine inspector of the ninth sub-district of the first anthracite coal inspection district of Pennsyl-
134 vania; and The Plymouth Coal Company, defendant, and the Lehigh and Wilkes-Barre Coal Company are mining

corporations of this commonwealth, each employing more than ten persons.

2. The said two coal companies are the owners, proprietors, lessees and occupiers of adjoining coal properties in the borough of Plymouth, Luzerne County, Pennsylvania, and within the limits of the said sub-district of the first anthracite coal inspection district.

3. The plaintiff, as said mine inspector, gave to the president of the defendant company a written notice dated August 31st, 1909, stating that a meeting would be held at the former's office on September 2nd, 1909, for the purpose of deciding upon the width of a boundary pillar of coal to be left between the coal properties of the said two companies, pursuant to the provisions of Section 10 of Article III of the Anthracite Mining Act of 1891, a copy of said section being embodied in the notice, and requested that the defendant's engineer be instructed to attend such meeting to consult with the engineer of the Lehigh and Wilkes-Barre Coal Company for the purpose aforesaid.

4. The defendant company declined to permit its engineer to attend such meeting, and refuses to leave any unmined coal as part of a boundary pillar between its coal property and that of the Lehigh and Wilkes-Barre Coal Company, claiming a legal right to mine to the boundary line of its property, and denying the constitutionality of Section 10, Article III of the said mining Act.

5. No determination of the width of, or necessity for, such boundary pillar had been made, as required by the act, up to the time of filing the bill in this case, nor has it been made since, so far as the court is advised.

135 *Conclusions of Law.*

1. Section 10 of Article III of the Anthracite Mining Act of June 2nd, 1891, P. L. 176, is a valid exercise of the police power of the state, and is not in conflict with the constitution of the United States nor with the constitution of Pennsylvania.

2. That enactment requires a boundary pillar of coal to be left unmined between the mine workings of the defendant company and the Lehigh and Wilkes-Barre Coal Company, of such width as the proper mine inspector and the engineers of the said two companies shall deem necessary to the safety of the men employed in either mine in case the other should be abandoned and allowed to fill with water, unless, after due investigation and consultation, they shall decide that no such barrier-pillar is required to ensure the safety of such employees upon the happening of the contingency stated in the act. The same act requires the making by said engineers and inspector of duplicate surveys of the face of the workings along such pillar, and the filing of a copy of the same with the owners of the adjoining properties and with the mine inspector.

3. The preliminary injunction heretofore granted should be continued until the width of such a boundary pillar, or the absence of necessity for one, shall have been determined by said inspector and engineers and surveys made and filed as required by the act, or until

they shall duly decide that no such pillar is needed for the safety of the employees of either mine.

4. The costs of this proceeding should be paid by the defendant.

And now, April 18th 1910, the prothonotary is directed to file of record in this cause the foregoing findings both of fact and law, and thereupon to enter the following decree nisi, and give notice
136 to the parties or their counsel in accordance with Rule 63 of Equity Practice.

By the Court.

GEO. S. FERRIS, *A. L. J.*

Decree Nisi.

Now, April 18th 1910, this cause having come on to be heard, and having been argued by counsel, upon consideration thereof it is ordered, adjudged and decreed,

1. That the injunction heretofore granted be, and the same is hereby, continued until further order of the court, without prejudice, however, to the right of the defendant to apply to the court for a dissolution or modification thereof, upon showing to the satisfaction of the court that the proper mine inspector and the engineers of the defendant company and the Lehigh and Wilkes-Barre Coal Company have, upon due investigation and consultation, determined that a barrier pillar of less width than that stated in the injunction (that is, less than seventy feet on defendant's property) is sufficient for the protection of the men employed in the mines of either company in case the mine of the other should be abandoned and allowed to fill with water, and have made duplicate surveys and filed copies of the same as required by law, or, upon such investigation and consultation shall have decided that no such barrier pillar is necessary to the safety of the employees of either company in the event aforesaid.

2. That the costs of this proceeding be paid by the defendant.

By the Court.

FERRIS, *J.*

Thos. H. Atherton, Benj. R. Jones, For Plaintiff.
John T. Lenahan, F. W. Wheaton, W. C. Price, for Defendant.

137 Endorsement: In Equity—No. 16, October Term, 1909. Commonwealth upon Application of David T. Davis, Mine Inspector, Etc., vs. The Plymouth Coal Company—Sur Bill, Answer, Replication and Testimony—Opinion and Decree Nisi—Filed 18 Apr. 1910.

138 Common Pleas of Luzerne County, in Equity, October Term, 1909.

No. 16.

COMMONWEALTH OF PENNSYLVANIA upon Application of DAVID T. DAVID, Inspector, etc.,
vs.
PLYMOUTH COAL COMPANY.

Exceptions on the Part of the Plymouth Coal Company, Defendant, to the Honorable Court's Conclusions of Fact and Law, and Decree Nisi.

The Plymouth Coal Company, by John C. Haddock, President, respectfully excepts to the conclusions of fact and law and decree set forth in the opinion and decree nisi of the Honorable George S. Ferris, one of the Judges of this court, filed in this case on the 18th day of April, 1910, as follows:

First. The Honorable Court erred in his fifth finding of fact where in he finds as follows: "No determination of the width of or necessity for such boundary pillar had been made as required by the act up to the time of filing the bill in this case nor has it been made since so far as the Court is advised."

Second. The Honorable Court erred in his first conclusion of law wherein he finds as follows: "First, Section 10 of Art. III of the Anthracite Mining Act of June 2, 1891, P. L. 176, is a valid exercise of the police power of the state, and is not in conflict with the constitution of the United States nor with the constitution of Pennsylvania."

Third. The Honorable Court erred in his second conclusion of law wherein he finds as follows: "Second, That enactment requires a boundary pillar of coal to be left unmined between the mine workings of the defendant company and the Lehigh & Wilkes-Barre Coal Company, of such width as the proper mine inspector and the engineers of the said two companies shall deem necessary to the safety of the men employed in either mine in case the other should be abandoned and allowed to fill with water, unless, after due investigation and consultation, they shall decide that no barrier pillar is required to ensure the safety of such employees upon the
139 happening of the contingency stated in the act. The same act requires the making by said engineers and inspector of duplicate surveys of the fact of the workings along such pillar, and the filing of a copy of the same with the owners of the adjoining properties and with the mine inspector."

Fourth. The Honorable Court erred in his third conclusion of law wherein he finds as follows: "The preliminary injunction heretofore granted should be continued until the width of such a boundary pillar, or the absence of necessity for one, shall have been determined by said inspector and engineers and surveys made and

filed as required by the act, or until they shall duly decide that no such pillar is needed for the safety of the employees of either mine."

Fifth. The Honorable Court erred in his fourth conclusion of law wherein he finds as follows: "Fourth, The costs of this proceeding shall be paid by the defendant."

Sixth. The Honorable Court erred in granting the decree nisi as follows: "First, That the injunction heretofore granted be, and the same is hereby continued until further order of the court, without prejudice, however, to the right of the defendant to apply to the court for dissolution or modification thereof upon showing to the satisfaction of the court that the proper mine inspector and engineers of the defendant company and the Lehigh & Wilkes-Barre Coal Company have upon due investigation and consultation, determined that a barrier pillar of less width than that stated in the injunction (that is, less than seventy feet on the defendant company's property) is sufficient for the protection of the men employed in the mines of either company in case the mine of the other should be abandoned and allowed to fill with water, and have made duplicate surveys and filed copies of the same as required by law, or, upon such investigation and consultation, shall have decided that no such barrier pillar is necessary to the safety of the employees of either company in the event aforesaid."

"Second, That the costs of this proceeding shall be paid by the defendant."

Respectfully submitted,

THE PLYMOUTH COAL CO.,
By JOHN C. HADDOCK, *P't.*

140 LUZERNE COUNTY, *ss:*

Personally appeared before me, John C. Haddock, President of the Plymouth Coal Company, who being duly sworn according to law deposes and says that the facts set forth in the foregoing exceptions are true as he verily believes and that these exceptions are filed not for delay but because they will raise questions requiring the action and decision of the court in order to prevent injustice.

JOHN C. HADDOCK.

Sworn and subscribed to before me this 27th day of April, 1910.

T. M. POWELL, *Proth'y,*
Per HARVEY.

Endorsement: No. 16 October Term 1909—Commonwealth of Pennsylvania, upon application of David T. Davis, Inspector, etc., vs. Plymouth Coal Company—Exceptions by Defendant—Filed 27 April 1910—25¢ Pd. Wm. C. Price, Att'y.

141 In the Court of Common Pleas of Luzerne County, in Equity, October Term, 1909.

No. 16.

COMMONWEALTH OF PENNSYLVANIA upon Application of DAVID T. DAVIS, Inspector of Mines, etc.,
vs.
THE PLYMOUTH COAL CO.

I hereby certify that the value of the coal property in controversy in the foregoing case tried before me is greater than fifteen hundred dollars ($1,500.00).
July 8th, 1910.

GEO. S. FERRIS, *Judge.*

Endorsement: No. 16 Oct. Term, 1909—Commonwealth of Pennsylvania, upon application of David T. Davis, Inspector of Mines, etc. vs. Plymouth Coal Co.—Certificate of the Court of amount in controversy, being over $1,500—Filed 8 July 1910.

142 In the Court of Common Pleas of Luzerne County, in Equity, October Term, 1909.

No. 16.

COMMONWEALTH OF PENNSYLVANIA upon Application of DAVID T. DAVIS, Mine Inspector, etc.,
vs.
PLYMOUTH COAL COMPANY.

In the Matter of Appeal by the Plymouth Coal Company from the Final Decree of the Court of Common Pleas of Luzerne County, Sitting in Equity in No. 16, October Term, 1909, Granting the Injunction Prayed for.

And now, July 15 1910, the Plymouth Coal Company, appellant, files the following

Assignments of Error.

First Assignment. The Honorable Court erred in his first conclusion of law wherein he finds as follows "First, Section 10 of Art. III of the Anthracite Mining Act of June 2, 1891, P. L. 176, is a valid exercise of the police power of the state, and is not in conflict with the constitution of the United States nor with the constitution of Pennsylvania."

Second Assignment. The Honorable Court erred in his second conclusion of law wherein he finds as follows: "Second, That enactment requires a boundary pillar of coal to be left unmined between

the mine workings of the defendant company and the Lehigh & Wilkes-Barre Coal Company, of such width as the proper mine inspector and the engineers of the said two companies shall deem necessary to the safety of the men employed in either mine in case the other should be abandoned and allowed to fill with water, unless, after due investigation and consultation, they shall decide that no barrier pillar is required to ensure the safety of
143 such employees upon the happening of the contingency stated in the act. The same act requires the making by said engineers and inspectors of duplicate surveys of the fact of the workings along such pillar, and the filing of a copy of the same with the owners of the adjoining properties and with the mine inspector."

Third Assignment. The Honorable Court erred in his third conclusion of law wherein he finds as follows: "The preliminary injunction heretofore granted should be continued until the width of such a boundary pillar, or the absence of necessity for one, shall have been determined by said inspector and engineers and surveys made and filed as required by the act, or until they shall duly decide that no such pillar is needed for the safety of the employees of either mine."

Fourth Assignment. The Honorable Court erred in his fourth conclusion of law wherein he finds as follows: "Fourth, The costs of this proceeding shall be paid by the defendant."

Fifth Assignment. The Honorable Court erred in granting the decree nisi as follows: "First, That the injunction heretofore granted be, and the same is hereby continued until further order of the court, without prejudice, however, to the right of the defendant to apply to the court for dissolution or modification thereof, upon showing to the satisfaction of the court that the proper mine inspector and engineers of the defendant company and the Lehigh & Wilkes-Barre Coal Company have upon due investigation and consultation, determined that a barrier pillar of less width than that stated in the injunction (that is, less than seventy feet on the defendant company's property) is sufficient for the protection of the men employed in the mines of either company in case the mine of the other should be abandoned and allowed to fill with water, and have made duplicate surveys and filed copies of the same as required by law, or, upon such investigation and consultation, shall have decided that no such barrier pillar is
144 necessary to the safety of the employees of either company in the event aforesaid." Second—That the costs of this proceeding be paid by the defendant.

Sixth Assignment. The Honorable Court erred in entering the final decree on exceptions to findings and decree nisi which reads as follows: "Now, June 20, 1910, this cause having come on to be heard, and exceptions to the findings of the trial judge and to the decree nisi having been argued by counsel before the court in banc, upon consideration thereof it is ordered, adjudged and decreed,

First, That the injunction heretofore granted be, and the same is hereby continued until further order of the court, without prejudice, however, to the right of the defendant to apply to the court

for dissolution or modification thereof, upon showing to the satisfaction of the court that the proper mine inspector and engineers of the defendant company and the Lehigh & Wilkes-Barre Coal Company have upon due investigation and consultation, determined that a barrier pillar of less width than that stated in the injunction (that is, less than seventy feet on the defendant company's property) is sufficient for the protection of the men employed in the mines of either company in case the mine of the other should be abandoned and allowed to fill with water, and have made duplicate surveys and filed copies of the same as required by law, or, upon such investigation and consultation, shall have decided that no such barrier pillar is necessary to the safety of the employees of either company in the event aforesaid. Second—That the costs of this proceeding shall be paid by the defendant.

Seventh Assignment. The Honorable Court erred in entering the foregoing decree for the following reasons: (*a*) the decree is not warranted by the facts; (*b*) the decree is not warranted by the facts found by the court; (*c*) the decree is not warranted by law.

145 Eighth Assignment. The Honorable Court erred in not dismissing the bill and refusing to grant the injunction prayed for.

Respectfully submitted,

THE PLYMOUTH COAL CO.,
By JOHN C. PRICE, *Att'y.*

Endorsement: No. 16 Oct Term, 1909—Commonwealth of Pennsylvania, upon application of David T. Davis, Mine Inspector, etc. vs. The Plymouth Coal Co.—Assignments of Error—Filed 15 July 1910.

146 In the Court of Common Pleas of Luzerne County, Sitting in Equity, October Term, 1909.

No. 16.

COMMONWEALTH upon Application of DAVID T. DAVIS, Mine Inspector, Etc.,

vs.

THE PLYMOUTH COAL COMPANY.

To B. R. Jones, Thos. H. Atherton, John T. Lenahan, F. W. Wheaton & W. C. Price, Attorney- for —— ——:

Take notice, That the Court has entered the following Decree Nisi, in the above entitled case and you are required to file exceptions thereto within ten days; if no exceptions be filed then all objections shall be deemed to be waived and a final decree will be entered, in accordance with Equity Rules Nos. 64 and 65.

T. M. POWELL,
Prothonotary,
Per HARVEY.

Decree Nisi.

Now, April 18th, 1910, this cause having come on to be heard, and having been argued by Counsel, upon consideration thereof it is ordered, adjudged and decreed,

1. That the Injunction heretofore granted be, and the same is hereby, continued until further order of the Court, without prejudice, however, to the right of the defendant to apply to the Court for a dissolution or modification thereof, upon showing to the satisfaction of the Court that the proper mine inspector and the engineers of the defendant company and the Lehigh and Wilkes-Barre Coal Company have, upon due investigation and consultation, determined that a barrier pillar of less width than that stated in the Injunction (that is, less than seventy feet on defendant's property) is sufficient for the protection of the men employed in the mines of either company in case the mine of the other should be abandoned and allowed to fill with water, and have made duplicate surveys and filed copies of the same as required by law, or, upon such investigation and consultation, shall have decided that no such barrier pillar is necessary to the safety of the employees of either company in the event aforesaid.

2. That the costs of this proceeding be paid by the defendant.

By the Court.

FERRIS, *J.*

Service accepted this 19th day of April, 1910.

ATHERTON & JONES,
Attorneys for Plaintiffs.
WM. C. PRICE,
Attorneys for Defendants.

147 Endorsement: In Equity—No. 16 October Term, 1909—Com. of Pa. ex Rel. David T. Davis, Mine Ins., vs. Plymouth Coal Company. Notice of Decree Nisi—Filed 19 April, 1910.

148 *Docket Entries.*

222, January Term, 1910.

COMMONWEALTH OF PENNSYLVANIA upon Application of David T. Davis, Inspector of Mines of the Ninth District of the First Anthracite Coal Inspection District of Pennsylvania, Acting in Behalf of the said Commonwealth, Plaintiff,

v.

THE PLYMOUTH COAL COMPANY, Defendant.

222. Wm. C. Price.

Appeal of Defendant,

No. 16, October Term, 1909, from the Decree.

In Equity.

Appeal from ourt of Common Pleas of the County of Luzerne Filed July 11, 1910.
Eo die Certiorari exit.
Ret'ble second Monday of April, 1911.
April 8, 1911, Record returned & filed.
Eo die Assignments of error filed.
April 10, 1911, Argued.
May 23, 1911, Decree affirmed. Per Curiam.
June 5, 1911, Remittitus exit and with record sent to Prothonotary of Luzerne County.

149 In the Supreme Court of Pennsylvania for the Eastern District.

Court of Common Pleas of the County of Luzerne, Sitting in Equity, October Term, 1909.

No. 16.

COMMONWEALTH OF PENNSYLVANIA upon Application of David T. Davis, Inspector of Mines of the Ninth District of the First Anthracite Coal Inspection District of Pennsylvania, Acting in Behalf of the said Commonwealth, Plaintiff,

—

THE PLYMOUTH COAL COMPANY, Defendant.

Enter Appeal on behalf of The Plymouth Coal Company, Defendant from the decree of the Court of Common Pleas sitting in equity of the County of Luzerne.

WM. C. PRICE,
Att'y for Appellant.

To James T. Mitchell, Prothonotary, Supreme Court—Eastern District.

COUNTY OF LUZERNE, *ss:*

John C. Haddock, President of the Plymouth Coal Company, Defendant, being duly sworn saith that said Appeal is not taken for the purpose of delay, but because Appellant believes he has suffered injustice by the decree of the court from which he appeals.

JOHN C. HADDOCK,
President of the Plymouth Coal Co.

Sworn and subscribed this 9" day of July A. D. 1910.
My commission expires Jan. 5-1913.
[SEAL.]

EDMUND E. JONES,
Notary Public.

150 Endorsement: No. 222 January Term, 1910—Supreme Court of Pennsylvania, Eastern District—Commonwealth of Pennsylvania et al. vs. The Plymouth Coal Company Appellant—Appeal and Affidavit—Filed Jul- 11 1910 in Supreme Court.—Frank W. Wheaton, John T. Lenahan, Wm. C. Price, Attorney- for Appellant.

151 In the Supreme Court of Pennsylvania for the Eastern District.

No. 16.

COMMONWEALTH OF PENNSYLVANIA upon Application of David T. Davis, Inspector of Mines of the Ninth District of the First Anthracite Coal Inspection District of Pennsylvania, Acting in Behalf of the said Commonwealth,

vs.

THE PLYMOUTH COAL COMPANY, Appellant.

Certiorari to the Court of Common Pleas of the County of Luzerne, Sitting in Equity, of October Term, 1909.

Issue Certiorari to the Court of Common Pleas of the County of Luzerne, sitting in equity to bring up record and proceedings in a certain action in said Court, No. 16 October Term 1909 Wherein Commonwealth of Pennsylvania et al. *is* Plaintiff- and The Plymouth Coal Company is Defendant.

Returnable to next Term, Sec. Reg.,

To James T. Mitchell, Prothonotary, Supreme Court—Eastern District.

WM. C. PRICE,
Attorney for Appellant.

Endorsement: No. 222 January Term, 1910—Supreme Court of Pennsylvania, Eastern District—Commonwealth of Pennsylvania et al. vs. The Plymouth Coal Company Appellant—Præcipe for Certiorari—Filed Jul- 11 1910—In Supreme Court—Frank W. Wheaton, John T. Lenahan, Wm. C. Price, Attorney- for Appellant.

152 EASTERN DISTRICT OF PENNSYLVANIA,
City and County of Philadelphia, ss:

The Commonwealth of Pennsylvania to the Justices of the Court of Common Pleas No. — for the County of Luzerne, Greeting:

[SEAL.]

We being willing for certain causes, to be certified of the matter of the appeal of The Plymouth Coal Company from the decree in Equity in No. 16 October Term 1909, wherein Commonwealth of Pennsylvania upon application of David T. Davis, Inspector of Mines of the Ninth District of the First Anthracite Coal Inspection District of Pennsylvania, acting in behalf of the said Commonwealth was plaintiff and the said appellant was defendant,

Before you, or some of you, depending, do command you, that the record and proceedings aforesaid, with all things touching the same, before the Justices of our Supreme Court of Pennsylvania, at a Supreme Court to be holden at Philadelphia, in and for the Eastern District, the second Monday of April next 1911,

So full and entire as in our Court before you they remain, you certify and send, together with this Writ that we may further cause to be done thereupon that which of right and according to the laws of the said State ought.

Witness the Honorable D. Newlin Fell, Chief Justice of our said Supreme Court, at Philadelphia, the eleventh day of July, in the year of our Lord one thousand nine hundred and ten.

ALFRED B. ALLEN,
Deputy Prothonotary.

153 I certify that Thos. P. Phillips is surety in the within case, in the sum of five hundred and no/100 ($500.00) dollars.

OLIN F. HARVEY, JR.,
Deputy Prothonotary.

To the Honorable the Judges of the Supreme Court of the Commonwealth of Pennsylvania, sitting in and for the Eastern District:

The record and process, and all things touching the same, so full and entire as before us they remain, we certify and send, as within we are commanded.

By the Court.

GEO. S. FERRIS, *P. J.* [L. S.]
—— ——. [L. S.]

Endorsement: No. 16 October Term 1909—C. P. Luzerne County in Equity—No. 222 January Term, 1910—Commonwealth of Pennsylvania, upon application of David T. Davis, Inspector, etc., v. The Plymouth Coal Company, Appellant—Certiorari to the Court of Common Pleas No. — for the County of Luzerne, Returnable the second Monday of April 1911. Rule on the Appellee, to appear and plead on the Return-day of the Writ. Alfred B. Allen—Now, July 15, 1910, service of within writ is hereby accepted and appellee

pleads "in nullo est erratum." B. R. Jones, Att'y for appellee—Filed Apr. 8, 1911 in Supreme Court—Wm. C. Price—Filed 15 July, 1910. $3.00 Att'y p'd.

154 VIII.

Assignments of Error.

And now, July 15, 1910, the Plymouth Coal Company, appellant, files the following

Assignments of Error.

First Assignment. The Honorable Court erred in his first conclusion of law wherein he finds as follows: "First, Section 10, of Article 3, of the Anthracite Mining Act of June 2, 1891, P. L. 176, is a valid exercise of the police power of the State, and is not in conflict with the Constitution of the United States nor with the Constitution of Pennsylvania."

Second Assignment. The Honorable Court erred in his second conclusion of law wherein he finds as follows: "Second. That enactment requires a boundary pillar of coal to be left unmined between the mine workings of the defendant company and the Lehigh & Wilkes-Barre Coal Company, of such width as the proper mine inspector and engineers of the said two companies shall deem necessary to the safety of the men employed in either mine in case the other should be abandoned and allowed to fill with water, unless, after due investigation and consultation, they shall decide that no barrier pillar is required to insure the safety of such employees upon the happening of the contingency stated in the Act. The same Act requires the making of said engineers and inspectors of duplicate surveys of the fact of the workings along such pillar, and the filing of a copy of the same with the owners of the adjoining properties and with the mine inspector."

Third Assignment. The Honorable Court erred in his third conclusion of law wherein he finds as follows: "The preliminary injunction heretofore granted should be continued until the width of such a boundary pillar, or the absence of necessity for one, shall have been determined by said inspector and engineers and sur-
155 veys made and filed as required by the Act, or until they shall duly decide that no such pillar is needed for the safety of the employees of either mine."

Fourth Assignment. The Honorable Court erred in his fourth conclusion of law wherein he finds as follows: "Fourth. The costs of this proceeding shall be paid by the defendant."

Fifth Assignment. The Honorable Court erred in granting the decree nisi as follows: "First. That the injunction heretofore granted be, and the same is, hereby continued, until further order of the Court, without prejudice, however, to the right of the defendant to apply to the Court for dissolution or modification thereof, upon showing to the satisfaction of the Court that the

proper mine inspector and engineers of the defendant company and the Lehigh & Wilkes-Barre Coal Company have, upon due investigation and consultation, determined that a barrier pillar of less width than that stated in the injunction (that is, less than seventy feet on the defendant company's property) is sufficient for the protection of the men employed in the mines of either company in case the mine of the other should be abandoned and allowed to fill with water, and have made duplicate surveys and filed copies of the same as required by law, or, upon such investigation and consultation, shall have decided that no such barrier pillar is necessary to the safety of the employees of either company in the event aforesaid.

"Second. That the costs of this proceeding be paid by the defendant."

Sixth Assignment. The Honorable Court erred in entering the final decree on exceptions to findings and decree nisi which reads as follows: "Now, June 20, 1910, this cause having come on to be heard, and exceptions to the findings of the trial judge and to the decree nisi having been argued by counsel before the Court in banc, upon consideration thereof it is ordered, adjudged and decreed:

"First. That the injunction heretofore granted be, and the
156 same is, hereby continued until further order of the Court, without prejudice, however, to the right of the defendant to apply to the Court for dissolution or modification thereof, upon showing to the satisfaction of the Court that the proper mine inspector and engineers of the defendant company and the Lehigh & Wilkes-Barre Coal Company have upon due investigation and consultation, determined that a barrier pillar of less width than that stated in the injunction (that is, less than seventy feet on the defendant company's property) is sufficient for the protection of the men employed in the mines of either company in case the mine of the other should be abandoned and allowed to fill with water, and have made duplicate surveys and filed copies of the same as required by law, or, upon such investigation and consultation, shall have decided that no such barrier pillar is necessary to the safety of the employees of either company in the event aforesaid.

"Second. That the costs of this proceeding shall be paid by the defendant."

Seventh Assignment. The Honorable Court erred in entering the foregoing decree for the following reasons: (*a*) the decree is not warranted by the facts; (*b*) the decree is not warranted by the facts found by the Court; (*c*) the decree is not warranted by law.

Eighth Assignment. The Honorable Court erred in not dismissing the bill and refusing to grant the injunction prayed for.

Respectfully submitted,

THE PLYMOUTH COAL COMPANY,
By WILLIAM C. PRICE, *Attorney.*

157 *Argument.*

Section 10, of Article 3, of the Act of June 2, 1891, P. L. 176, is as follows: "It shall be obligatory on the owners of adjoining coal properties to leave, or cause to be left, a pillar of coal in each seam or vein of coal worked by them, along the line of adjoining property, of such width, that taken in connection with the pillar to be left by the adjoining property owner, will be a sufficient barrier for the safety of the employees of either mine in case the other should be abandoned and allowed to fill with water; such width of pillar to be determined by the engineers of the adjoining property owners, together with the inspector of the district in which the mine is situated, and the surveys on the face of the workings along such pillar shall be made in duplicate and must practically agree. A copy of such duplicate surveys, certified to, must be filed with the owners of the adjoining properties and with the inspector of the district in which the mine or property is situated."

Defendant claims that Section 10 of the mine law above referred to violates the provisions of the fourteenth amendment to the Federal Constitution, which provides that "no State shall deprive any person of life, liberty, or property without due process of law"; also, that it violates the tenth section of Article 1 of the Constitution of Pennsylvania, which provides that private property shall not be taken or applied to public use without authority of law or without full compensation first made or secured.

The section above referred to involves two questions of law:

158 First.

May the Legislature enact a law requiring a property owner to sacrifice a valuable property, without compensation, to provide for a contingency which by the very lan——

Endorsement: Supreme Court of Pennsylvania, Eastern District, No. 222 Jan. Term, 1911. Commonwealth of Pennsylvania upon the application of David T. Davis, Inspector of Mines, etc., Appellee, vs. The Plymouth Coal Company, Appellant. Assignments of Error. Filed Apr. 8, 1911, in Supreme Court. John T. Lenahan, F. W. Wheaton, Wm. C. Price, Counsel for Appellant.

159 In the Supreme Court of Pennsylvania, Eastern District, January Term, 1910.

No. 222.

COMMONWEALTH
v.
THE PLYMOUTH COAL COMPANY.

Appeal from Court of Common Pleas of Luzerne County.

Filed May 23, 1911.

Per CURIAM:

The decree appealed from is affirmed on the opinion of Judge Ferris.

160 EASTERN DISTRICT OF PENNSYLVANIA, *sct:*

The Commonwealth of Pennsylvania to the Justices of the Common Pleas Court, County of Luzerne, Greeting:

[SEAL.]

Whereas, By virtue of our Writ of Certiorari from our Supreme Court of Pennsylvania for the Eastern District returnable in the same Court on the second Monday of April in the year of our Lord one thousand nine hundred and eleven, a record was brought into the same Court, upon Appeal by The Plymouth Coal Company, from your decree made in the matter of No. 16 October Term 1909, wherein Commonwealth of Pennsylvania, upon application of David T. Davis, Inspector of Mines of the Ninth District of the First Anthracite Coal Inspection District of Pennsylvania, acting in behalf of the said Commonwealth was plaintiff and the said appellant was defendant.

And it was so proceeded in our said Supreme Court, that the following judgment was made to wit:

Decree affirmed.

And the record proceedings thereupon, and all things concerning the same, were (agreeably to the directions of the Act of Assembly in such cases made and provided) ordered by the said Supreme Court to be remitted to the C. P. Court for the County of Luzerne, aforesaid, as well for execution or otherwise as to justice shall appertain: Wherefore we here remit you the Record of the judgment aforesaid and the proceedings thereupon, in order for execution or otherwise, as aforesaid.

Witness the Honorable D. Newlin Fell, Doctor of Laws, Chief Justice of our said Supreme Court at Philadelphia, 5th day of June in the year of our Lord one thousand nine hundred and eleven.

ALFRED B. ALLEN,
Deputy Prothonotary.

161 Endorsement: No. 16. October Term 1909—C. P. Luzerne Co.—In Equity—No. 222 January Term, 1910—Supreme Court—Commonwealth of Pennsylvania, upon application of David T. Davis, Inspector, etc., v. Plymouth Coal Company, Appellant—Remittitur—Att'y $3.00—Filed 6 June 1911.

162 STATE OF PENNSYLVANIA,
Eastern District:

I, Alfred B. Allen, Deputy Prothonotary of the Supreme Court of Pennsylvania, in and for the Eastern District, do hereby certify that the above and foregoing is a true copy of the Record in the above entitled cause, so full and entire as appears of Record in said Court.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at Philadelphia, this 26th day of July, A. D. 1911.

[Seal of the Supreme Court of Pennsylvania, 1776.]

ALFRED B. ALLEN,
Deputy Prothonotary.

163 I, D. Newlin Fell, Chief Justice of the Supreme Court of Pennsylvania, do hereby certify, that Alfred B. Allen was, at the time of signing the annexed attestation, and now is, Deputy Prothonotary of the said Supreme Court of Pennsylvania, in and for the Eastern District, to whose acts, as such, full faith and credit are and ought to be given; and that the said attestation is in due form.

In witness whereof, I have hereunto subscribed my name this 20th day of September one thousand nine hundred and eleven.

D. NEWLIN FELL.

I, Alfred B. Allen, Deputy Prothonotary of the Supreme Court of Pennsylvania, in and for the Eastern District, do certify, that the Honorable D. Newlin Fell by whom the foregoing Certificate was made and given, was, at the time of making and giving the same, and is now, Chief Justice of the Supreme Court of Pennsylvania; to whose acts, as such, full faith and credit are and ought to be given, as well in Courts of Judicature as elsewhere; and that his signature, thereto subscribed, is genuine.

In testimony whereof, I have hereunto set my hand and affixed the Seal of the said Supreme Court of Pennsylvania, in and for the Eastern District, at Philadelphia, this 20th day of September one thousand nine hundred and eleven.

[Seal of the Supreme Court of Pennsylvania, 1776.]

ALFRED B. ALLEN,
Deputy Prothonotary.

Endorsed on cover: File No. 22,871. Pennsylvania Supreme Court. Term No. 102. The Plymouth Coal Company, plaintiff in error, vs. The Commonwealth of Pennsylvania, David T. Davis, inspector or mines, etc. Filed September 25th, 1911. File No. 22,871.

IN THE

Supreme Court of the United States.

THE PLYMOUTH COAL COMPANY, *Plaintiff in Error,*
vs.
THE COMMONWEALTH OF PENNSYLVANIA, DAVID T. DAVIS, Inspector of Mines.

No. 102, October term, 1913.

I.

STATEMENT OF THE CASE.

This is a case involving the constitutionality of a certain section of the Anthracite Mine Laws of Pennsylvania.

Section 10, of Article III, of the Act of June 2, 1891, P. L. 176, reads as follows:

> "It shall be obligatory on the owners of adjoining coal properties to leave, or cause to be left, a pillar of coal in each seam or vein of coal worked by them, along the line of adjoining property, of such width, that taken in connection with the pillar to be left by the adjoining property owner, will be a sufficient barrier for the safety of the employees of either mine in case the other should be abandoned and allowed to fill with water; such width of pillar to be determined by the engineers of the adjoining property owners, together with the inspector of the district in which the mine is situated, and the surveys of the face of the workings along such pillar shall be made in duplicate and must practically agree. A copy of such duplicate surveys, certified to, must be filed with the owners of the adjoining properties, and with the inspector of the district in which the mine or property is situated."

The Lehigh & Wilkes-Barre Coal Company and The Plymouth Coal Company are the lessees and owners of adjoining coal properties in the borough of Plymouth and vicinity.

On August 31, 1909, Mr. David T. Davis, the inspector of mines of the district in which said properties are located, wrote a letter to Mr. John C. Haddock, the president of the Plymouth Coal Company, requesting him to direct the engineer of the Plymouth Coal Company to report at his office for the purpose of meeting with the engineer of the Lehigh & Wilkes-Barre Coal Company and decide on the thickness of the barrier pillar to be maintained between the properties of the two companies in accordance with the provisions of the Anthracite Mine Laws, Section 10, of Article III, of the Act of June 2, 1891, P. L. 176.

Mr. Haddock, president of the Plymouth Coal Company, declined to comply with the request of the mine inspector, whereupon the mine inspector, on behalf of the Commonwealth, filed his bill of complaint, and an injunction was granted prohibiting the Plymouth Coal Company from working its mine without leaving a pillar of coal on its property at least seventy feet in width along the line of the adjoining property of the Lehigh & Wilkes-Barre Coal Company.

Exceptions were filed by this plaintiff in error to the decree of the Court of Common Pleas of Luzerne county, which were overruled by said Court of Common Pleas, and upon appeal to the Supreme Court of Pennsylvania, the decree of the lower court was sustained, whereupon said Plymouth Coal Company, plaintiff in error, entered its appeal in this court.

II.

STATEMENT OF THE QUESTION INVOLVED.

The constitutionality of Section 10, of Article III, of the Act of June 2, 1891, P. L. 176.

1. Is not the manner and method of fixing the width of a barrier coal pillar in said Act so crude, uncertain and unjust as to constitute a taking of property "without due process of law?"

III.

SPECIFICATION OF ERRORS RELIED UPON.

1. The Court erred in holding that the provisions of Section 10, of Article III, of the Act of June 2, 1891, P. L. 176, of the statute laws of Pennsylvania, are not in conflict with and repugnant to Article XIV, Section 1, of the amendments to the Constitution of the United States, which declares that "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States nor shall any State deprive any person of life, liberty or property, without due process of law."

2. The Court erred in affirming the decree of the Court of Common Pleas of Luzerne county, sitting in equity, on the appeal taken from said decree to the Supreme Court of the State of Pennsylvania.

IV.

ARGUMENT.

Our complaint in this case is made simply and solely on the ground that the manner and method of fixing the width of a barrier pillar between adjoining coal properties described in the section of the Act involved is unconstitutional, and if allowed to stand, will be productive of much injustice and consequent litigation. It will be a very simple matter to prepare a barrier pillar Act, providing for the safety of employees in mines, by requiring a barrier pillar, the width

of which shall be fixed by a competent tribunal, wherein all parties interested may appear after proper notice, with their witnesses and experts, providing also for the right of appeal.

The Legislature under the police power of the State may undoubtedly enact legislation requiring coal owners to work their property in such manner as to prevent injury to the property and employees of adjacent owners, but it cannot arbitrarily create a tribunal with power to deprive the coal owner of his property without right of appeal or providing for notice or a hearing or some legal method of procedure, and any legislation without such provisions would be a taking of property "without due process of law."

The method and manner of adjusting the width of the barrier pillar under the section of the Act above referred to is so apparently defective and irregular that it should need no argument to enable one to arrive at the conclusion that the same is unconstitutional. The lack of uniformity of the tribunal authorized and the uncertainty of the manner in which the members thereof shall render their judgment, would in itself render the Act void. The Act undoubtedly contemplates three arbiters only, whereas the tribunal provided for might under the language of the Act consist of fifty or more, and forty-eight of the fifty might be engineer employees of forty-eight coal owners along the line of one owner and thus combine against the one owner and compel him to leave a barrier pillar of an unreasonable width and not in accordance with justice and the judgment of the engineer of the one owner owning the larger portion of the coal.

The Act does not state whether the tribunal shall be unanimous in the judgment to be rendered or what shall be done in case of disagreement. In case of disagreement, therefore, a solution of the question to be determined may be delayed for such a length of time as to harrass the mining operations of the coal owner and throw hundreds of workmen out of employment.

The Act also presupposes a condition which does not always exist, viz.: that all the owners of coal properties

have engineers in their employ, whereas there are a large number of coal owners who have no engineers in their employ, *particularly among the lessors of coal property* who have vested rights in coal lands and the protection of whose rights is in no way provided for by the section referred to.

The section in question should provide for notice to all parties having a vested right in the coal property. Large bodies of coal are being mined by mining companies under "coal leases". The lessee is the owner in common parlance, but the lessor is a very much interested party, and the Act should provide for proper notice to the lessor and all other parties having any present vested interest. It does not provide for a hearing where the owners or parties interested may have an opportunity to appear and protect their rights, nor does it provide for any appeal or course of legal procedure according to those rules and principles which have been established by our jurisprudence for the protection and enforcement of private rights.

"While the phrase 'due process of law,' as applied in this country is more or less controlled by its application to the facts and conditions of the particular case, yet in its universality it implies the right of the person to be affected by judicial proceedings against him, to be placed before the tribunal which pronounces judgment upon the question of life, liberty, or property, in its most comprehensive sense; to be heard by testimony or otherwise, and to have the right of controverting by proof every material fact which bears on the question of right in the matter involved. If any question of fact or liability be conclusively presumed against him there is not due process of law."

Rutherford's Case, 72 Pa. 82.
Philadelphia vs. Scott, 81 Pa. 80.
Hancock vs. Borough of Wyoming, 148 Pa. 635.
Words and Phrases Judicially Interpreted, Vol. 3, 2250.
Kuntz vs. Sumption, 2 L. R. A., 655.

It may be admitted that a statute which should authorize any debt or damage to be adjudged against a person upon purely ex party proceedings, without a pretense of notice or any provision for defending, would be a violation of the Constitution and be void.

In Re Empire City Bank, 18th N. Y. 199, 215.
Cooley on Constitutional Limitation, 7th Ed. 582.

In the case of Stewart vs. Palmer, 74 N. Y. Rep 183, involving an Act of Assembly authorizing assessments for local improvements, the Act did not provide sufficient notice to the property owners, the Court defines "due process of law" as follows:

> "Any definition which could be given would probably fail to comprehend all the cases to which it would apply. It may, however, be stated generally that due process of law requires an orderly proceeding adapted to the nature of the case, in which the citizen has an opportunity to be heard, and to defend, enforce and protect his rights. *A hearing or an opportunity to be heard is absolutely essential.*" (Page 191.)
>
> "The law" (the Act in question) "requires no notice and a provision for notice cannot be implied. (Page 186.) It is not enough that the owners may by chance have notice or that they as a matter of favor have a hearing. *The law must require notice to them, and give them the right to a hearing and an opportunity to be heard.* The constitutional validity of law is to be tested not by what has been done under it, *but by what may by its authority be done.* The Legislature may prescribe the kind of notice and the mode in which it shall be given, but it cannot dispense with all notice." (Page 188.)

In the case of In Re Jensen, 59 N. Y. Supplt. 653, involving an Act of Assembly authorizing the recovery of counsel fees and expenses by city officials improperly convicted without provision for notice to the city, was declared unconstitutional.

In this case the Court defines "due process of law" as follows:

> "Due process of law implies notice and a hearing, or an opportunity to be heard," and this is not required or yet provided for by the Act in question. True, notice of this application has been given, but the test is not what has been done under the Act, *but what may be done thereunder.*"

In the case of County of San Matteo vs. Southern Pacific R. Co., 13 Fed. Rep. *722*, the Court decided:

Whatever the character of the proceeding by which one is deprived of his property, whether judicial or administrative, and whether it takes the property directly or creates a charge or liability which may be the basis of taking it, the law directing the proceeding must provide for some kind of notice and offer to the owner an opportunity to be heard, or the proceeding will want the essential ingredient of due process of law.

See also In Re Rosser, 101 Fed. Rep. 562, 567.
Londoner vs. City and County of Denver, 210 U. S. Rep. 373

The report of this case in the Supreme Court of Pennsylvania is to be found in 232 Pa. 141. There was no opinion delivered by that Court, saving in these words:

> "The decree appealed from is affirmed on the opinion of Judge Ferris."

The opinion of Judge Ferris deals, substantially, only with the question of the right of the Legislature, in the exercise of its police power, to direct that barrier pillars shall be left. He holds that where the police power is exercised, no compensation need be allowed. It is not necessary for us, for the purposes of the present appeal, to combat either proposition. Conceding that the right to insist upon barrier pillars being left, was within the police power, the real question is, whether the manner of determination of their thickness required by the Act was by a proceeding which was due process of law."

The appeal to the Supreme Court of Pennsylvania was from a decree of injunction by the Court of Common Pleas, which reads thus:

> "That the injunction heretofore granted be and the same is hereby continued until further order of the Court, without prejudice however to the right of the defendant to apply to the Court for a dissolution or modification thereof, upon showing to the satisfaction of the Court that the proper mine inspector and the engineers of the defendant company and the Lehigh & Wilkes-Barre Coal Company have, upon due investigation and consultation, determined that the barrier pillar of less width than that stated in the injunction (that is, less than seventy feet on defendant's property) is sufficient for the protection of the men employed in the mines of either company in case the mine of the other should be abandoned and allowed to fill with water, and have made duplicate surveys and filed copies of the same as required by law, or upon such investigation and consultation shall have decided that no such barrier pillar is necessary for the safety of the employees of either company, in the event aforesaid."

The theretofore granted special injunction had forbidden working the plaintiff in error's mine "adjoining the mines or coal property of the Lehigh & Wilkes-Barre Coal Co. in the borough of Plymouth, without leaving a pillar of coal of the thickness of at least seventy feet in each seam or vein of coal worked by them along the line of the Lehigh & Wilkes-Barre Coal Co., adjoining property owner, as a barrier pillar, for the safety of the employees of either mine in case the other shall be abandoned and allowed to fill with water."

There was no evidence offered in the Court below, nor any determination by it, that such width of pillar was necessary. The Inspector of Mines had filed a bill of complaint (Record 10), averring a failure of the Plymouth Coal Company, after notification, to be present with its engineer, to meet with the inspector and the engineer of the Lehigh & Wilkes-Barre Coal Company, owners of the adjoining

property, "for the purpose of determining the width of the pillar to be left by the said two coal companies as a barrier," etc., and praying for an injunction restraining the company, *inter alia*, from working its mine "without leaving a pillar of coal of the thickness or width of at least thirty feet in each seam or vein of coal worked by them along the line of the Lehigh & Wilkes-Barre Coal Company," etc.

The proceedings in the Court of Common Pleas were had under Article XV, Section 1, of the Act of 1891, which reads thus:

> "Upon application of the inspector of mines of the proper district acting in behalf of the Commonwealth, any of the courts of law or equity having jurisdiction where the mine or colliery proceeded against is situated, whether any proceedings have or have not been taken, shall prohibit, by injunction or otherwise, the working of any mine or colliery in which any person is employed or is permitted to be, for the purpose of working in contravention of the provisions of this Act, and may award such costs in the matter of the injunction or other proceedings as the Court may think just; but this section shall be without prejudice to any other remedy permitted by law for enforcing the provisions of this Act. Written notice of the intention to apply for such injunction in respect to any mine or colliery shall be made to the owner, operator or superintendent of such mine or colliery not less than twenty-four hours before the application is made."

The bill rested upon an averment of violation of the Act in refusing to appoint an engineer to meet for the purpose of determining the width of the barrier pillar.

The coal ordered to be left unmined in the barrier pillar (Record 33) amounted to 734,147 tons, which could be mined at a net profit of about $300,000 (Record 39).

It will probably be conceded that this prohibition against making use of some $300,000 worth of coal, amounts to a deprivation of property to that extent.

We do not question that it is entirely within the province

of the Legislature, in the exercise of its police power, to compel the reservation of barrier pillars for the protection of life and property. It is not necessary to consider whether, in the exercise of such power, it may prescribe the exact width of the pillar. Sufficient for the present purpose to say that it has not attempted to make any such prescription. In the nature of things, it would have been impossible to do so, because the width of the pillar must, in each case, be determined with reference to the situation of each particular property.

The police power was properly exercised when, in the first part of the section, the Legislature thus directed:

> "It shall be obligatory on the owners of adjoining coal properties to leave or cause to be left a pillar of coal in each seam or vein of coal worked by them along the line of adjoining property, of such width that, taken in connection with the pillar to be left by the adjoining property owner, will be a sufficient barrier for the safety of the employees of either mine in case the other shall be abandoned and allowed to fill with water."

It was exercised by this provision to the extent of requiring, not that any specific width of pillar should be left, but that one shall be left of such width, taken in connection with the adjoining pillar, as would be "a sufficient barrier for the safety," etc.

What follows in the concluding portion of the section is not the exercise of the police power, but such power having been exercised, is the method of procedure prescribed for determining what width of pillar, in each case, ought to be retained.

The Legislature does not say what is sufficient. It merely provides that there must be sufficient.

The determination of sufficiency of width is a legal question, the Legislature having required that there should be a sufficiency.

A property right of great value is involved. Its deprivation can only result from an ascertainment of an underlying fact, *i. e.*, what safety requires.

All such questions must be determined in the ordinary course of legal proceedings, as such proceedings are conducted in the State in which the property is situated. It is not competent for the Legislature to provide a different, and unusual, tribunal to determine a fact upon which the practical value of property must depend.

There is a line of cases which hold that under certain contingencies certain designated officials may take immediate action required in conservation of the health. Imported articles containing matters liable to spread infection, may be destroyed by officials designated for the purpose. The same destruction may be provided for in the case of spreading fire or other matters demanding instant action for the protection of the public.

The present case is not within the class to which we have referred.

The Legislature having determined that a sufficient barrier must be left, it would be within the ordinary course of legal procedure to file a bill seeking to enjoin any owner who was mining within the danger limit. Any exigency could be met by a special injunction. The fact to be determined is one peculiarly within the province of a Court, and the usual method of procedure in courts amply protects the public and all concerned.

There is not the slightest necessity to constitute a tribunal from which no right of appeal is given, which shall determine the fact of what safety may require.

The tribunal which is constituted by the Legislature and the provisions connected therewith, are almost grotesque. The necessary width is to be determined by "the engineers of the adjoining property owners, together with the inspector of the district in which the mine is situated."

On one side of the pilar may be a mining property owned by one person. On the other side there may be several owners of one adjoining property, or such adjoining property may consist of several parcels, each having a separate owner. How many engineers are to act? If there are several own-

ers of one adjoining property, must all combine, or can each name an engineer? If they must combine and cannot agree, what will be the result? There may be several engineers of each adjoining property. Must all act? One of the property owners may have no engineer. Is such owner to be debarred from any participation in the determination? Who is to determine whether the persons asserting a right to act as engineers are really such? Must the determination be by the majority of the members of a tribunal composed of engineers and inspector, or must the determination be unanimous? Is the inspector to poll but one vote in the tribunal, or is his vote to count as the equivalent of that of all the engineers?

In what manner is the proceeding to be conducted which is to lead to the determination? Must it be with or without notice? If notice must be given, what must be the amount of time allowed?

If a majority of the members of this determining tribunal is to govern, then one of the parties interested may so preponderate in the number of its representatives on the board as to force upon the other, the allowance of a greater width in order that a smaller width may be permitted to be by it left.

A determination of fact is permitted to be made by interested parties which determination may profit one, and injure the other.

In the present case, until such a board has met, the plaintiff in error has been forbidden to use its property to the extent of a barrier pillar of the width of seventy feet, although it has not been found that any such restriction is required for safety.

Just what is "due process of law" is not very easy to define; but we are aware of no proceeding like the present, having even been claimed, much less decided, to be "due process."

This Court, in Holden v. Hardy, 169 U. S. 389, has attempted to define the almost undefinable, and, through Mr. Justice Brown, has said:

"We do not wish, however, to be understood as holding that this power is unlimited. While the people of each State may doubtless adopt such system of laws as best conform to their own traditions and customs, the people of the entire country have laid down in the Constitution of the United States certain fundamental principles to which each member of the Union is bound to accede as a condition of its admission as a State. Thus, the United States are bound to guarantee to each State a republican form of government, and the tenth section of the first article contains certain other specified limitations upon the power of the several States, the object of which was to secure to Congress paramount authority with respect to matters of universal concern. In addition, the Fourteenth Amendment contains a sweeping provision forbidding the States from abridging the privileges and immunities of citizens of the United States, and denying them the benefit of due process or equal protection of the laws.

"This court has never attempted to define with precision the words 'due process of law,' nor is it necessary to do so in this case. It is sufficient to say that there are certain immutable principles of justice which inhere in the very idea of free government which no member of the Union may disregard, as that no man shall be condemned in his person or property without due notice and an opportunity of being heard in his defense. What shall constitute due process of law was perhaps as well stated by Mr. Justice Curtis in Murray's Lessees vs. Hoboken Land Co., 18 How. 272, 276, as anywhere. He said: 'The Constitution contains no description of those processes which it was intended to allow or forbid. It does not even declare what principles are to be applied to ascertain whether it be due process. It is manifest that it was not left to the legislative power to enact any process which might be devised. The article is a restraint on the legislative as well as on the executive and judicial powers of the government, and cannot be so construed as to leave Congress free to make any process 'due process of law,' by its mere will. To what principles,

then, are we to resort to ascertain whether this process, enacted by Congress, is due process? To this the answer must be twofold. We must examine the Constitution itself, to see whether this process be in conflict with any of its provisions. If not found to be so, we must look to those settled usages and modes of proceeding existing in the common and statute law of England, before the emigration of our ancestors, and which are shown not to have been unsuited to their civil and political condition by having been acted on by them after the settlement of this country.'

"It was said by Mr. Justice Miller, in delivering the opinion of this court in Davidson vs. New Orleans, 96 U. S. 97, that the words 'law of the land,' as used in Magna Charta, implied a conformity with the 'ancient and customary laws of the English people,' and that it was wiser to ascertain their intent and application by the 'gradual process of judicial inclusion and exclusion as the cases presented for decision shall require, with the reasoning on which such decisions may be founded.' Recognizing the difficulty in defining, with exactness, the phrase 'due process of law,' it is certain that these words imply a conformity with natural and inherent principles of justice, and forbid that one man's property, or right to property, shall be taken for the benefit of another, or for the benefit of the State, without compensation; and that no one shall be condemned in his person or property without an opportunity of being heard in his own defense."

The Michigan statute providing for a Board of Registration to determine the qualifications of those engaged in the practice of medicine, which has been quoted by our adversaries as in point, has no relevancy, for the reason stated by Mr. Justice Brewer:

"The objection that the statute attempts to confer judicial power on the board is not well founded. Many executive officers, even those who are spoken of as purely ministerial officers, act judicially in the determination of facts in the performance of their official duties; and in so doing

> they do not exercise 'judicial power', as that phrase is commonly used, and as it is used in the organic act, in conferring judicial power upon specified courts. The powers conferred on the board of medical examiners are nowise different in character in this respect than those exercised by the ex-examiners of candidates to teach in our public schools, or by tax assessors or boards of equalization in determining, for purposes of taxation, the value of property. The ascertainment and determination of qualifications to practice medicine by a board of competent experts, appointed for that purpose, is 'not the exercise of a power which appropriately belongs to the judicial department of the government.' "

In Davidson vs. New Orleans, 96 S. C. 97, Mr. Justice Miller said:

> "But, apart from the imminent risk of a failure to give any definition which would be at once perspicuous, comprehensive, and satisfactory, there is widom, we think, in the ascertaining of the intent and application of such an important phrase in the Federal Constitution, by the gradual process of judicial inclusion and exclusion, as the cases presented for decision shall require, with the reasoning on which such decisions may be founded. This Court is, after an experience of nearly a century, still engaged in defining the obligation of contracts, the regulation of commerce, and other powers conferred on the federal government, or limitations imposed upon the States."

This statement is followed by the laying down of certain propositions, none of which, however, support the constitutionality of the tribunal whose jurisdiction we deny.

In a concurring opinion in the Davidson case, Mr. Justice Bradley said:

> "I think, therefore, we are entitled, under the Fourteenth Amendment, not only to see that there is some process of law, but 'due process of law,' provided by the State law when a citizen is deprived of his property; and that, in judging what is 'due process of law,' respect must be had to the

> cause and object of the taking, whether under the taxing power, the power of eminent domain, or the power of assessment for local improvements, or none of these; and if found to be suitable or admissible in the special case, it will be adjudged to be 'due process of law;' but if found to be arbitrary, oppressive, and unjust, it may be declared to be not 'due process of law.' Such an examination may be made without interfering with that large discretion which every legislative power has of making wide modifications in the forms of procedure in each case, according as the laws, habits, customs, and preferences of the people of the particular State may require."

The leading case upon the subject is Murray vs. Hoboken, 18 Howard, 276. The pertinent part of Mr. Justice Curtis' opinion, however, in the last cited case, is quoted in what is said in the Holden case.

In the present case, we claim that the plaintiff in error has been deprived of the use of its property by a decree forbidding such use because of its failure to submit its legal rights to a tribunal unable to determine the same "in due process of law"

WILLIAM C. PRICE,
JOHN G. JOHNSON,
For Plaintiff in Error.

FILED
JAN 12 1914
JAMES D. MAHER
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1913.

No. 102

THE PLYMOUTH COAL COMPANY,
Plaintiff in Error,

vs.

THE COMMONWEALTH OF PENNSYLVANIA,
DAVID T. DAVIS, Inspector of Mines,
Defendants in Error.

Brief of Defendant in Error

B. R. Jones,
Morris Wolf,
Third Deputy Atty. Gen.,
Wm. M. Hargest,
Second Deputy Atty. Gen.,
John C. Bell,
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For Defendant in Error.

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IN THE

SUPREME COURT OF THE UNITED STATES

No. 102 OCTOBER TERM, 1913

THE PLYMOUTH COAL COMPANY,
Plaintiff in Error,

vs.

THE COMMONWEALTH OF PENNSYLVANIA,
DAVID T. DAVIS, Inspector of Mines,
Defendants in Error.

Argument

Act of Assembly

The controversy in this case turns upon the question of the constitutionality of Section 10, Article III of the Pennsylvania Anthracite Mining Law of 2nd June, 1891, (Pamphlet Laws 176).

The Act is entitled:

> "An act to provide for the health and safety of persons employed in and about the anthracite coal mines of Pennsylvania and for the protection and preservation of property connected therewith."

Section 10 is as follows:

> "It shall be obligatory on the owners of adjoining coal properties to leave, or cause to be left, a pillar of coal in each seam or vein of coal worked by them, along the line of adjoining property, of such width, that, taken in connection with the pillar to be left by the adjoining property owner, will be a sufficient barrier for the safety of the employees of either mine in case the other should be abandoned and allowed to fill with water; such width of pillar to be determined by the engineers of the adjoining property owners, together with the inspector of the district in which the mine is situated, and the surveys of the face of the workings along such pillar shall be made in duplicate and must practically agree. A copy of such duplicate surveys, certified to, must be filed with the owners of the adjoining properties and with the inspector of the district in which the mine or property is situated."

Contention of Plaintiff in Error.

The Plaintiff in Error contends that "the manner and method of fixing the width of a barrier coal pillar in said Act is so crude, uncertain and unjust as to con-

stitute a taking of property 'without due process of low.'" (Brief of plaintiff in error, page 3).

Facts

The facts are:

The Lehigh and Wilkes-Barre Coal Company is the owner of one coal property and the Plymouth Coal Company of an adjoining property in Luzerne County. The inspector of mines in the district in which these properties are located requested the President of the Plymouth Coal Company to direct the engineer of that Company to meet the engineer of the Lehigh and Wilkes-Barre Coal Company and the inspector, for the purpose of determining the width of the barrier pillar to be left by the Plymouth Coal Company along the line of the Lehigh and Wilkes-Barre Coal Company's property.

This request was declined by the Plymouth Company, which further declared its intention to ignore any proceeding which might be taken under Section 10 of Article 3 of the Act of 2nd June, 1891. Thereupon the inspector filed his Bill in Equity in the Court of Common Pleas of Luzerne County as provided by Article XV of this Act of Assembly, and that Court entered the decree appealed from. The decree enjoined the Plymouth Company from reducing the width of the barrier pillar along the line of the Lehigh and Wilkes-Barre Coal Company's property below seventy feet, until the proper mining inspector and the engineers of the two properties concerned determined "upon due investigation and consultation" that the protection of the men in those mines could be secured by a narrower pillar or that no pillar at all was necessary.

CONTENTION OF DEFENDANT.

The contention of the defendant in error is that the Act in question is constitutional and this contention is based upon three propositions of law, which are as follows:

I. THE TRADE OR BUSINESS OF MINING IS A PROPER SUBJECT OF REGULATION BY THE STATES UNDER THEIR POLICE POWER.

II. IT IS NOT A VIOLATION OF THE FOURTEENTH AMENDMENT TO REGULATE THE BUSINESS OF MINING BY RESTRICTING THE USE OF PROPERTY EMPLOYED IN SAID BUSINESS IN A MANNER AND TO AN EXTENT DETERMINED B YAN ADMINISTRATIVE OFFICER OR BODY.

III. THE ADMINISTRATIVE BODY PROVDED FOR BY THE ACT OF 1891 TO DETERMINE THE WIDTH OF BARRIER PILLARS OF COAL IS A PROPER TRIBUNAL TO WHICH TO LEAVE THAT QUESTION, BOTH AS TO ITS CONSTITUTION AND METHOD OF OPERATION.

I.

The Trade Or Business Of Mining Is A Proper Subject Of Regulation By The States Under Their Police Power.

The plaintiff in error, admits (Brief page 4):

"The Legislature under the police power of the State may undoubtedly enact legislation requiring coal owners to work their property in such manner as to prevent injury to property and employees of adjacent owners."

And again (Brief, pages 9 and 10):

"We do not question that it is entirely within the province of the Legislature in the exercise of its police power to compel the reservation of barrier pillars for the protection of life and property."

Indeed the plaintiff in error concedes (Brief page 10) that the police power was properly exercised when the Legislature made it obligatory upon the owners of adjoining coal property to leave a pillar of such width, taken in connection with the adjoining pillar, as would be a sufficient barrier for safety.

These concessions of the plaintiff in error are recognitions of the rule which was so clearly laid down by the Supreme Court in *Holden* vs. *Hardy, 169 U. S. 366 (1898)*, in which the Court held constitutional a statute limiting the hours of work of persons employed in underground mines and workings, in smelters and other institutions for the reduction or refining of ores or metals, to eight hours a day.

In that case Mr. Justice Brown, speaking for the court, said inter alia:

> "While the business of mining coal and manufacturing iron began in Pennsylvania as early as 1716, and in Virginia, North Carolina and Massachusetts even earlier than this, both mining and manufacturing were carried on in such a limited way and by such primitive methods that no special laws were considered necessary, prior to the adoption of the Constitution, for the protection of the operatives; *but, in the vast proportions which these industries have since assumed, it has been found that they can no longer be carried on with due regard to the safety and health of those engaged in them, without special protection against the dangers necessarily incident to these employments. In consequence of this, laws have been enacted in most of the States designed to meet these exigencies and to secure the safety of persons peculiarly exposed to these dangers.* In others (States) where mining is the principal industry, special provision is made for the shoring up of dangerous walls, for ventilation shafts, bore holes, escapement shafts, means of signaling the surface, for the supply of fresh air and the elimination, as far as possible, of dangerous gases, etc. The statutes have been repeatedly enforced by the courts of the several States; their validity assumed, and, so far as we are informed, they have been uniformly held to be constitutional."

This rule was reiterated in *St. Louis Consolidated Coal Company* vs. *Illinois, 185 U. S. 203 (1901),* in which the Court sustained a statute of Illinois providing that mines should be classified by mine inspectors and examined as often as the inspectors deemed it

necessary and proper, at an inspection fee payable by the mine owner and varying with the class of the mine. In this case Mr. Justice Brown said:

> *"The regulation of mines and miners, their hours of labor and the precautions that shall be taken to insure their safety, health and comfort are so obviously within the police power of the several states that no citation of authority is necessary to vindicate the general principle."*

This rule was finally re-stated by the Court in *Barrett* vs. *Indiana, 229 U. S. 26 (1912),* in which the Court held constitutional a statute of Indiana requiring the entries to mines to be of a prescribed width, as follows, per Mr. Justice Day:

> *"That the mining of coal is a dangerous business and therefore subject to regulation is also well settled.* It is an occupation carried on at varying depths beneath the surface of the earth, amidst surroundings entailing danger to life and limb, and has been, as it may be, the subject of regulation in the coal mining states by statutes which seek to secure the safety of those thus employed. The Legislature is itself the judge of the the means necessary and proper to that end, and only such regulations as are palpably arbitrary can be set aside because of the requirements of due process of law under the Federal Constitution. When such regulations have a reasonable relation to the subject-matter and are not arbitrary and oppressive, it is not for the Courts to say that they are beyond the exercise of the legitimate power of legislation. * * *
>
> We are unable to say that the requirement that entries shall have a certain width beyond the tracks

as prescribed by this statute, would not promote the safety of the employes engaged in that work. The legislature found for reasons sufficient to itself, that such additional width, kept clear of obstructions would promote the safety of the employes and we are not prepared to say that in enacting such legislation it violated the Federal Constitution."

Carroll vs. *Greenwich Ins. Co., 199 U. S. 401; Lindsley* vs. *National Carbonic Gas Co., 220 U. S. 61.*

The same principle which permits the Legislature to prescribe the hours of employment of miners, the frequency of inspection of mines and the width of the entry to a mine, all of which legislation is for the purpose of protecting the employees therein, necessarily will justify an act requiring a protecting pillar of coal to be left like a party wall between two mines in order that there may be protection afforded to the employees of each mine against water or gases which might come from one mine to the other if there were no dividing wall.

II.

It Is Not A Violation Of The Fourteenth Amendment To Regulate The Business Of Mining By Restricting The Use Of Property Employed In Said Business In A Manner And To An Extent Determined By An Administrative Officer Or Body.

This proposition also is practically admitted by the

plaintiff in error. The width of the barrier of coal necessary to afford protection depends upon so many local conditions that it would be impossible to prescribe any fixed width which would at all times afford protection and would not in some cases require the owner to leave unmined an unnecessarily large quantity of coal. Indeed, the statutes recognize that there may be conditions in some mines which make it unnecessary for any barrier pillar to be left.

As the plaintiff in error itself admits (Brief page 10):

"In the nature of things it would have been impossible to do so (for the legislature to prescribe an exact width of the pillar) because the width of the pillar must, in each case, be determined with reference to the situation of each particular property."

It therefore was necessary that the determination of the width of the pillar in each particular case should be left to some person or body.

In this respect the situation was identical with that which has confronted the Legislatures of many states in the passage of police regulations, where the details of the administration thereof could not be defined by the Legislature in advance.

Many of these statutes have been attacked on the same ground as the statute in this case is attacked, namely, that they effected a deprivation of the right guaranteed by the Fourteenth Amendment because they entrust the administration of these regulations to the discretion of an administrative officer or body.

In all the cases which have come before the Supreme

Court it has been recognized that such a method of administering police regulations is necessary and proper. The principle is so well-established and has been so recently reaffirmed by the Supreme Court that we will not make an extensive citation of authorities to support the proposition.

In *Fischer* vs. *St. Louis, 194 U. S. 361, (1904),* the Court held constitutional an ordinance of the City of St. Louis forbidding the erection or establishment of a dairy or cow stable within the limits of the City *without first obtaining permission from the Municipal Assembly by ordinance..* The plaintiff in error claimed that this ordinance violated the Fourteenth Amendment because it gave the local authorities the right to permit or refuse the erection and establishment of these stables. The Court said, per Mr. Justice Brown:

> "As the dispensing power must be vested in some one it is not easy to see why it may not properly be delegated to the Municipal Assembly which enacted the ordinance. Of course cases may be imagined where the power to issue permits may be abused and the permission accorded to social or political favorites and denied to others who for reasons totally disconnected with the merits of the case are distasteful to the licensing power. No such complaint, however, is made to the practical application of the law in this case and we are led to infer that none such exists. * * *
>
> We see no difficulty in vesting in some body of men presumed to be acquainted with the business and its conditions the power to grant permits in special cases. It has been held in some of the state courts to be contrary to the spirit of American institutions to vest this dispensing power in the hands of a single individual (citing cases from State

Courts) and in others that such authority cannot be delegated to the adjoining lot owners (citing cases from State Courts) *but the authority to delegate that discretion to a board appointed for that purpose is sustained by the great weight of authority (citing cases from State Courts), and by this Court the delegation of such power even to a single individual was sustained* in *Wilson* vs. *Eureka City, 173 U. S. 32,* and *Gundling* vs. *Chicago 177 U. S. 183.*"

In *Jacobson* vs. *Massachusetts, 197 U. S. 11 (1905),* the Court held constitutional a statute of Massachusetts providing that "*the Board of Health of a City or town, if in its opinion it is necessary* for the public health or safety, shall require and enforce the vaccination and re-vaccination of all the inhabitants thereof." The plaintiff in error there claimed that the Act violated the Fourteenth Amendment because, inter alia, it vested in the Board of Health the right to determine when vaccination should be required. The Court said, page 25, per Mr. Justice Harlan:

> "*The State may invest local bodies called into existence for the purpose of local administration with authority in some appropriate way to safeguard the public health and the public safety.*
>
> Page 27 * * * *
>
> The authority to determine for all what ought to be done in such an emergency must have been lodged somewhere or in some body; and surely it was appropriate for the Legislature to refer that question in the first instance to a Board of Health composed of persons residing in the locality affected and appointed presumably because of their fitness to determine such questions. To

invest such a body with authority over such matters was not an unusual nor an unreasonable or arbitrary requirement."

In the leading case of *Lieberman* vs. *Van DeCarr, 199 U. S. 552 (1905)*, the Court held constitutional a provision of the Sanitary Code of New York providing, (page 7).

"No milk shall be received, held, kept either for sale or delivered in the City of New York *without a permit in writing from the Board of Health* and subject to the conditions thereof."

The plaintiff in error had a permit which was revoked by the Board of Health but he continued to sell milk and when arrested claimed that the above-quoted provision of the Sanitary Code violated the Fourteenth Amendment because it "devolves upon the Board of Health absolute and despotic power to grant or withhold permits to malk dealers and is therefore not due process of law."

The Court said, page 560, per Mr. Justice Day:

"That this Court will not interfere because the States have seen fit to give administrative discretion to local boards to grant or withhold licenses or permits to carry on trades or occupations or perform acts which are properly the subject of regulation in the exercise of the reserve power of the States to protect the health and safety of its people, there can be no doubt. * * *

Page 562.

"These cases (those before-mentioned herein) leave in no doubt the proposition that the conferring of discretionary power upon administra-

tive boards to grant or withhold permission to carry on a trade or business which is the proper subject of regulation within the police power of the State is not violative of rights secured by the Fourteenth Amendment. There is no presumption that the power will be arbitrarily exercised and when it is shown to be thus exercised against the individual under sanction of State authority this Court has not hesitated to interfere for his protection when the case has come before it in such manner as to authorize the interference of a Federal Court, *Yick Wo* vs. *Hopkins, 118 U. S. 356.*"

Attention is called to the statement of Mr. Justice Holmes in *Lieberman* vs. *Van DeCarr* (supra) that he concurred in the decision but did not understand that the action of the Board of Health was intended to be subject to judicial revision as to its reasonableness. This question is considered hereafter and it is respectfully submitted that the later decisions have established the rule that there is an implied right of appeal where the discretion of administrative bodies in the determination of questions arising under the execution of police power has been unreasonably exercised.

In *Bradley* vs. *Richmond, 227 U. S. 477 (1913),* an ordinance of the City of Richmond was held constitutional which required persons in various businesses to pay a license tax and *authorized certain City officials to classify the different businesses,* the amount of tax varying with the different classes. The Court held that this method of classifying the businesses did not violate the Fourteenth Amendment, saying, per Mr. Justice Lurton, page 482.

"Neither do we see any reason under the Fourteenth Amendment why the State may not delegate to either the council of the City or to a board appointed for that purpose the power to divide such occupations or privileges into classes or subclasses and prescribe the tax to be paid by the members of each such class." (Citing Gundling vs. Chicago; Fischer vs. St. Louis; Lieberman vs. Van De Carr.

As bearing directly upon the case before the Court we refer to *St. Louis Consolidated Coal Company* vs. *Illinois, 185 U. S. 203 (1901),* before mentioned in which the Court held constitutional those sections of the Mining Act of Illinois which provided for a division of the State into inspection districts and for the appointment of inspectors, whose qualifications are prescribed, and further provided that coal mine operators must pay an inspection fee of not less than six dollars nor more than ten dollars for each inspection, "such fee to be regulated by the *class of a mine* (*which shall be fixed by the inspector* and depending upon the length of time consumed and the expenses necessarily incurred in the inspection of such mine)," and providing "it shall be the duty of each inspector *as often as he may deem necessary and proper* and at least four times a year to inspect each and every mine in his inspection district." The plaintiff in error claimed that these provisions were violative of the Fourteenth Amendment because they vested the duty of classifying the mines and thereby fixing the inspection fees to be paid, and of determining how many inspections should be made by the mining inspectors. The Court said, page 209, per Mr. Justice Brown:

"It is insisted that such classification of mines as to the number of inspections and fees therefor should be made by the Legislature and nothing

be left to the inspectors or other officers to determine the number of times a particular mine shall be inspected and the fees chargeable therefor. The ordinary classification is made by the Legislature where such classification can be logically made either upon the basis of capital stock, number of operatives, mileage or other facts which can be seized upon as an easy and an approximately just basis for classification. But in such a case as this there are so many elements entering into the classification as to make it impossible to seize upon one or two and make them the only basis. For instance, the number of inspections to be made might depend not only upon the size of the mines and the number of operatives, but upon the character of the work being done, the nature of the soil being excavated and depth of the excavation and a dozen other features, all of which might enter into the basis of a classification by a competent inspector and no one of which can be said to be determinative. We do not regard the Act as necessarily violative of the Fourteenth Amendment in the fact that some discretion is allowed to the inspector in determining the number of times the mines shall be inspected and the fees fixed therefor, particularly in view of the fact that no complaint is made of the abuse of such discretion or that the inspector has been 'guilty of any act tending to the injury of miners or operators of mines during their term of office.' * * *

(Page 211)

In enacting a law with regard to the inspection of mines, we see no objection, in case the Legislature find it impracticable to classify the mines for the purpose of inspection, to commit that power to a body of experts who are not only experienced

in the operation of mines, but are acquainted with the details necessary to be known to make a reasonable classification, although it may affect the amount of fees to be paid by the mine owners.

It is obviously necessary that the number of inspections per year shall be determined by some one and by some executive officer. As it is clearly a matter of detail which could not be determined by the courts it occurs to us that it could be entrusted to no one so safely as to the inspector of the district, who is appointed with great care, and who must be thirty years of age, a citizen of the State, and have a knowledge of mining engineering sufficient to conduct the development of coal mines and a practical knowledge of the method of conducting the mining for coal in the presence of explosive gases and of the ventilation of coal mines. Each one must have a practical mining experience of ten years, not interested as owner, operator, stock holder, superintendent or mining engineer of any coal mine during his term of office, and be of good moral character and temperate habits."

See also:

Davis vs. *Massachusetts, 167 U. S. 43.*
Wilson vs. *Eureka City, 173 U. S. 32.*
Gundling vs. *Chicago, 177 U. S. 183.*

It is therefore respectfully submitted that there can be no question of the right of a State to entrust to an administrative body the execution of regulation of trade made by the State in the exercise of its police power. And that the Legislature of Pennsylvania had a right to give to some person or body the right to determine what thickness of barrier pillar must be al-

lowed to remain by a mine owner for the safety of the employees of an adjoining mine.

III.

THE ADMINISTRATIVE BODY PROVIDED FOR BY THE ACT OF 1891 TO DETERMINE THE WIDTH OF BARRIER PILLARS OF COAL IS A PROPER TRIBUNAL TO WHICH TO LEAVE THAT QUESTION, BOTH AS TO ITS CONSTITUTION AND METHOD OF OPERATION.

In considering this proposition it is necessary to determine:

(a) What is required to satisfy the "due process" clause of the Constitution of the United States.

(b) The attack made upon this Act of Assembly by Plaintiff in Error.

What Does Due Process of Law Require?

Article 14, Section 1 of the amendments to the Constitution of the United States declares that "No state shall make or enforce any law which shall abridge the privileges or immunities of any citizen of the United States, nor shall any state deprive any person of life, liberty or property without due process of law."

That this provision of the constitution secures to everyone the right to have notice of any proceeding in which his life, liberty or property may be affected, and to be afforded an opportunity to defend, protect and en-

force such rights in an orderly proceeding *adapted to the nature of the case.*

> *10 Am. & Eng. Ency. of Law, 2d Ed. 296 and notes.*

The same principle is otherwise stated in the quotation found on page 5 in brief of plaintiff in error:

> "To be heard by testimony *or otherwise,* and to have the right to controverting by proof every material fact which bears on the question of right in the matter involved."

"Due process of law" does not require that a person whose property is affected should have *personal* notice of the proceeding. The notice may be actual or constructive.

> *Mason* vs. *Messenger, 17 Iowa 270.*
> *U. S. Trust Co.* vs. *U. S. Fire Insurance Co., 18 N. Y. 200.*

Neither does "due process of law" require a hearing before a judicial tribunal. It only requires an orderly proceeding adapted to the nature of the case in which the citizen has the opportunity to be heard and to defend and enforce his rights. This guaranty does not establish or perpetuate any particular form of action or mode of procedure, so long as the substantial rights are preserved.

> *Davidson* vs. *New Orleans, 96 U. S. 97.*
> *Garvin* vs. *Daussman, 114 Ind. 429.*
> *5 Am. St. Rep. 637.*
> *The Matter of Ross, 38 La. Ann. 523.*

In *N. Y. & N. E. R. R. Co.* vs. *Bristol, 151 U. S., 556-*

571 this court, in an opinion delivered by Chief Justice Fuller, in a discussion of a statute compelling the removal of grade crossings on a railroad, says:

> "Nor are they thereby deprived of property 'without due process of law,' by statutes under which the result is ascertained in a mode suited to the nature of the case and not merely arbitrary and capricious; and that the adjudication of the highest court of a State, that, in such particulars, a law enacted in the exercise of the police power of the State, is valid, will not be reversed by this court on the ground of an infraction of the Constitution of the United States."

In the matter of *William Ross, 38 La. Ann 523,* in this case the statute provided: "That the person, represented as a lunatic, shall be brought before the judge at chambers and that if, after inquiry, the judge finds that such person ought to be sent to the insane asylum, he shall make out his warrant," etc. The complaint of the petitioner was that he had been deprived of his liberty without due process of law. The court said: *"The right to 'due process of law,' does not imply that, in every case, the parties interested, shall have a hearing in court.* Provision having been fully made for the hearing and determining the matter, under Sec. 1768 R. S., and the hearing and determining having taken place in every respect in point of form, as required by the statute, the petitioner cannot be listened to complain that he has been deprived of his liberty without 'due process of law.'"

C. B. & Q. R. R. Co. vs. *State, 66 N. W. Rep., 624, 628.*

Commonwealth vs. *Beatty, 15 Pa. Super. Ct., 5.*

Powell vs. *Pennsylvania, 127 U. S., 678.*

Boston Beer Co. vs. *Massachusetts, 97 U. S., 25.*

Consolidated Coal Co. vs. *People, 186 Ill., 135.*

In the light of these cases the Defendant in Error contends that Section 10, of Article III, of the Pennsylvania statute of 1891 conforms to every requirement of due process of law.

B. Examination of the Attack Made by the Plaintiff in Error.

The attack of the Plaintiff in Error is on the constitutionality of this statute.

Test of Constitutionality.

In determining the constitutionality of an act of assembly it is to be construed in every possible way to sustain it, and every possible presumption is to be indulged in favor of it. This applies as well whether it be tested by the State or the Federal Constitution.

Sinking Fund Cases, 99 U. S., 700, 718;
Mugler vs. *Kansas, 123 U. S., 623, 661.*

In order to sustain its argument that the body established by the Act of 1891 was not a proper body in whom to vest the determination of the width of barrier pillar, the plaintiff in error gives the provisions of the Act an unnatural meaning and one which does violence to the wording of the statute. Not only should the wording not be stretched so as to accomplish the unconstitutional result which the plaintiff in error attempts to give to the Act, but, on the contrary, it should be strained if necessary so as to render the Act constitutional.

As said by the Supreme Court in *United States* vs.

Delaware and Hudson Company, 213 U. S. 366, (1909), page 407, per Mr. Justice White:

> "It is elementary when the constitutionality of a statute is assailed, if the statute be reasonably susceptible of two interpretations, by one of which it would be unconstitutional, and by the other valid, it is our plain duty to adopt that construction which will save the statute from constitutional infirmity. *Knights Templar Indemnity Co.* vs. *Jarman, 187 U. S. 197-205.*
>
> And unless this rule be considered as meaning that our duty is to first decide that a statute is unconstitutional, and then proceed to hold that such ruling was unnecessary because the statute is susceptible of a meaning which causes it not to be repugnant to the constitution, the rule plainly must mean that where a statute is susceptible of two constructions, by one of which grave and doubtful constitutional questions arise, and by the other of which such questions are avoided, our duty is to adopt the latter. *Harriman* vs. *Interstate Commerce Commission, 211 U. S., 407.*

The plaintiff in error admits that "it is entirely within the province of the Legislature, in the exercise of its police power, to compel the reservation of barrier pillars for the protection of life and property." (*Brief of Plaintiff in Error, pp. 9, 10.*)

But contends,

"That the manner and method of fixing the width of a barrier pillar between adjoining coal properties described in the section of the act involved, is unconstitutional." (*Brief of Plaintiff in Error, p. 3*).

The attacks made upon this act of assembly are,

1. That there is a lack of uniformity of the tribunal and the uncertainty of the manner of rendering judgment.

2. The act may provide for one engineer by one owner, but a number of engineers by adjoining owners, to act in the same tribunal, and the majority combined against one owner to compel a barrier pillar of unreasonable width.

3. The act does not state whether the tribunal should be unanimous, or what should happen in the case of agreement.

4. In case of disagreement the solution of the question may be delayed to embarrass the mining operations of the owners and throw "hundreds of workmen out of employment."

5. That the act requires owners of coal properties to have engineers in their employ, whereas a number of such coal owners have no engineers.

6. That it does not provide for notice to all parties "having vested rights in coal property."

7. That it does not provide for a hearing where the owners or parties interested may have an opportunity to appear.

This is a resume of the objections found on pages 4 and 5 of brief of plaintiff in error, and when analyzed it will be found that these objections have no merit whatever.

Fallacy of Position of Plaintiff in Error.

We may examine the various attacks of the plaintiff in error in the light of general principles heretofore referred to.

1. *It is contended that there is a lack of uniformity of the tribunal authorized by the Act of Assembly, and the uncertainty of the manner of rendering judgment.*

The act itself answers this criticism. The act of assembly of May 1891, P. L. 176-183, provides:

> "It shall be obligatory on the owners of adjoining coal properties to leave, or cause to be left, a pillar of coal in each seam or vein of coal worked by them along the line of adjoining property of such width that, taken in connection with the pillar to be left by the adjoining property owner, will be a sufficient barrier for the safety of the employees of either mine in case the other should be abandoned and allowed to fill with water; such width of pillar to be determined by the engineers of the adjoining property owners, together with the inspector of the district in which the mine is situated, and the surveys of the face of the workings along such pillar shall be made in duplicate and must practically agree."

What possible lack of uniformity of this tribunal can there be?

The tribunal consists of one engineer of the owners of the adjoining properties, together with the inspectors of the district. It is argued that because there may be on one side of the pillar property owned by one person, and on the other side there may be sev-

eral owners of one adjoining property, that the act may provide for all of the engineers of the adjoining properties, acting together with the inspector of the district, so that there might be a preponderance of representatives of one party on the board, and thus force upon the other the allowance of greater width than necessary.

The answer to this criticism is complete. The Supreme Court of Pennsylvania has already construed this Act of Assembly in the case of *Curran* vs. *Delano, 235 Pa., 478,* and its construction, for the purposes of this case, is binding on this court.

In that case Mr. Justice Mestrezat said, page 485:

> "The tribunal created by the statute *composed of two mining engineers and a mine inspector* is more competent to determine the proper width of the boundary pillar than a judge inexperienced in such matters and who must rely upon the information he obtains from witnesses. The voluminous testimony in this case shows the diversity of opinion of the several witnesses and also discloses the wisdom of the statute in providing a tribunal *composed of three mine experts* to determine the question."

But the contention of the plaintiff in error that the tribunal, under the language of the Act, might consist of fifty or more arbiters is not sustained by the wording of the Act, which clearly indicates that only the two owners of the mines on the opposite side of a pillar are, with the mine inspector, to determine its width. If a pillar along the boundary of A's mine ran for part of its distance along B's mine and for part along C's mine, the width of the pillar between A's mine and B's will be determined by the engineers of A and B and the inspector, and the width of the pillar between A's mine and C by the engineers of A and C and the inspector.

If the word "engineers," in the plural, might be construed to create a partial and improper tribunal because it *might be* construed to include all of the engineers of owners on one side of the pillar against one engineer of a single owner on the other side and thereby render it unconstitutional, it will not be so construed. The word "engineers" is plural, and two makes the plural. One engineer of each of the adjoining parties will come within the letter and spirit of this language, and construed in that way there can be no question of the lack of uniformity of the tribunal.

It is the duty of the court to construe the act so as to save its constitutionality; that is to say, if one of two constructions renders it unconstitutional, the one which saves it must be adopted.

Neither can there be any valid criticism of the method in which members of the tribunal shall "render their judgment." Their judgment is to be "the width of the pillar." When their judgment has been rendered, "the surveys of the face of the workings along such pillars shall be made in duplicate and must practically agree. A copy of such duplicate surveys certified to, must be filed by the owners of the adjoining properties and the inspector of the district in which the mine or property is situated." There is no uncertainty as to what this tribunal shall do when it has reached its conclusion.

It would be difficult to conceive of a more fairly constituted tribunal than the Act provides for. The intention of the provision in question is to protect persons at work in one mine from the danger to which they might be subjected if a wall between the mine in which they are working and the adjoining mine, as to the conditions of whose workings they are likely to be in ignor-

ance, is removed, and protection against the water and gases which might accumulate therein is thus withdrawn. The natural desire of each owner will be that his neighbor shall be compelled to leave a maximum width of pillar and he himself a minimum width. Between these conflicting interests comes the inspector The inspectors are required by the Mine Act (2nd of June, 1891, P. L. 176) to be sworn to perform their duties with fidelity and impartiality. They are persons who must be at least thirty years old and must have a knowledge of the different systems of working coal mines and produce satisfactory evidence to the Board of Examiners of having had at least five years practical experience in anthracite coal mines in Pennsylvania (Section 6). They may not be the agent of any coal mine or pecuniarily interested in operating any coal mine in the district assigned to them (Section 12). Finally, they may be removed after hearing by petition of fifteen or more coal operators or miners alleging neglect, incompetency and malfeasance in office (Section 13).

In this respect the Pennsylvania Act is similar to the Illinois Act under consideration in the case of St. Louis Consolidated Coal Company vs. Illinois, above referred to, and the Supreme Court in that case considered the qualifications and the liability to removal as making the mine inspector a particularly proper person in whom to repose the discretion necessary to carry out the legislative regulation of mines.

2. Is the construction of the tribunal uncertain? It is said on page 4 of the argument in the brief of plaintiff in error:

> "The act undoubtedly contemplates three arbitrators *only*, whereas the tribunal provided for eight, under the language of the act, consist of

fifty or more. * * * * * and thus combine against the owner and compel him to leave a barrier pillar of unreasonable width."

The answer to that attack is in the language quoted. If the act "undoubtedly contemplates three arbitrators only," then undoubtedly the tribunal consists of three arbitrators only, and what *might* happen under some other construction of the act, cannot be taken into consideration in an endeavor to find some reason for determining the act unconstitutional.

3. The Method of Reaching a Determination.

It is argued that the act does not state whether the tribunal shall be *unanimous* in the judgment to be rendered, or what shall be done in the case of disagreement.

It is not important to the determination of any constitutional question whether the judgment must be that of all of the members of the tribunal, or of the majority only.

The Act of Assembly seems to require the unanimous judgment of this tribunal.

The language is that "the engineers of the adjoining properties, *together* with the inspector of the district," shall determine the width of the pillar. If one engineer and inspector determined it, it would not be the determination of "The engineers of the adjoining property owners." If the two engineers determined the width of the pillar, it would not be determined "together with" the inspector.

So that:

If it is to be determined by the engineers, "together with the inspector," it requires the unanimous judgment of all of the members of the board.

Moreover, this act of assembly itself further indicates that section 10, Article 3, relating to the width of the barrier pillar requires the unanimous judgment of that tribunal. In section 1 of Article 16, there is a provision for an arbitration, and it is there provided "The said board of arbitrators shall be composed of three persons, one of whom shall be chosen by the inspector, one by the said owner, operator or superintendent, and a third by the two thus selected, and the decision of a *majority of such board* shall be final and binding in the matter.

The legislature, therefore, in this same act of assembly, when it intended that a decision of a majority should control, used the appropriate words therefor.

If the proper interpretation be, as already suggested, that the judgment of the tribunal must be unanimous, then it follows that:

Each party having had its own representative on the tribunal necessarily had notice of the proceeding, and

The vote of the agent and representative of each party being necessary to the judgment of the tribunal, it not only had an opportunity to be heard, but took part in and consented to the determination.

However, if the Act of Assembly does not require the unanimous judgment then the general rule is that "in the absence of any provision in the submission, the word of arbitrators or appraisers must be unanimous in matters of private concern, but a majority can act when the matter submitted is one which concerns the public."

Omaha vs. *Omaha Water Co., 218 U. S., 180..*

In this case Mr. Justice Lurton said, page 192:

"When a matter of purely private concern is

submitted to the determination of either arbitrators or appraisers, the rule seems to be that there must be unanimity of conclusion by such board unless otherwise indicated by the terms of the submission. * * * The rule is, however, otherwise when the submission is one which concerns the public. In such submission whether it be the arbitration of a difference or the ascertainment of a value, a majority may act unless otherwise indicated by the agreement for submission. Why this distinction should exist, is not altogether clear. In both instances the persons to whom the submission is made are acting under a power and must stay within it. The reason probably lies in the fact that public affairs are controlled by majorities and by analogy a majority should control when the submission is a matter which concerns the public. But, whatever the reason, so are the authorities."

Columbia vs. *Cauca Co., 190 U. S., 524;*
People ex rel Nicals, 52 N. Y., 478.
Gas Co. vs. *Wheeler, 8 W. Va., 320.*
Grindley vs. *Barker, 1 Bos. & Pull. 329.*

But, as before indicated, the Defendant in Error insists that the Court need not concern itself with this question. Whether this tribunal renders its judgment by unanimous vote or by a majority, certainly does not, in either event, stamp the act as unconstitutional.

From whatever angle viewed the provision of the statute that the width of the pillar is to be determined "by the engineers of the adjoining property owners" and the mine inspector, necessarily pre-supposes notice to the owners of the intention to determine the width of the pillar, and a "determination" of the width necessarily pre-supposes the presentation and consideration of evi-

dence necessary to enable a reasonable conclusion to be reached.

The Right of Appeal from the Determination.

The Plaintiff in Error assumes that no appeal will lie from the finding of the tribunal established by the Act because the Act does not specifically authorize it.

If the judgment must be unanimous, then there is no opportunity for appeal, because each party has contributed to the judgment.

Even if the judgment is by a majority only there is no necessity for appeal. All that the law requires is a proper opportunity to be heard before ONE tribunal.

Moreover, if there were no right of appeal the Act nevertheless would be entirely constitutional, as evidenced from the fact that there was no appeal in any one of the numerous cases cited above under the branch of our argument on the delegation of power to officers and tribunals, a fact particularly noticed by Mr. Justice Holmes in the statute held constitutional in *Lieberman* vs. *Van DeCarr, 199 U. S., 557, (1905).*

It is submitted, however, that a right of appeal would be implied in case the tribunal corruptly or unreasonably misused the power given to it by the Act.

In this aspect of the case the statute resembles those Acts which allow the seizure of diseased food by health inspectors. A leading case of this kind is *North American Storage Company* vs. *Chicago, 211 U. S., 306, (1908),* in which the health officers were given a right to seize, condemn and destroy any food which they deemed

unfit for eating. It was contended that the statute was unconstitutional because it did not give the owner of the property an opportunity to be heard before the property was destroyed. The Court said that this was unnecessary as the owner had an implied right to appeal from the action of the health authorities if they had not proper warrant for what they had done. The Court said, per Mr. Justice Peckham:

> "A determination on the part of the seizing officers that food is in an unfit condition to be eaten is not a decision which concludes the owner. The ex-parte finding of the health officers as to the fact is not in any way binding upon those who own or claim the right to sell the food. If a party can not get his hearing in advance of the seizure and destruction he has the right to have it afterward, which right may be claimed upon the trial in an action brought for the destruction of his property, and in that action those who destroyed it can only successfully defend if the jury shall find the fact of unwholesomeness as claimed by them.

To the same effect is *Adams* vs. *Milwaukee, 228 U. S. 572, (1912).* Attention is called to the language of Mr. Justice Day in *Lieberman* vs. *Van DeCarr, 199 U. S., 552 (1905)* (Supra), as follows:

> "There is no presumption that the power will be arbitrarily exercised and when it is shown to be thus exercised against the individual under sanction of state authority this ourt has not hesitated to interfere for his protection when the case has come before it in such manner as to authorize the interference of a Federal Court, *Yick Wo* vs. *Hopkins, 118 U. S., 356.*"

And the language of Mr. Justice Lurton in *Bradley* vs. *Richmond, 227 U. S., 477 (1913)*, as follows:

> "But it is said that after all there is no security that the City Council will not in the end approve of a scheme of classification operating most unjustly. The same objection might be made with reference to any tribunal required to determine such a matter. The presumptions which must be indulged run counter to the suggestion made. If the right to appear and be heard and to obtain a review should prove illusory, *there would, under general principles of jurisprudence, remain the right to judicial review if the result should violate either a right secured under the law of the State or that of the United States.*"

There is another line of cases showing the implied right of appeal from the erroneously exercised discretion of administrative officers even though no right of appeal is expressed. These are the cases in which land officers and post office officials have been given the right to determine certain questions regarding the rights of persons to patents or lands or the use of the postal facilities. A clear statement of the rule in such cases is given by Mr. Justice Brown in *Public Clearing House* vs. *Coyne, 194 U. S., 497 (1904)*, in which the Court held constitutional a statute giving the Postmaster General the right to issue a fraud order "upon evidence satisfactory to him that any person or company is engaged in conducting any lottery, gift enterprise or scheme for the distribution of money."

Mr. Justice Brown says, in part, page 509:

> "Inasmuch as the action of the postmaster in seizing letters and returning them to the writers is subject to revision by the judicial department of the government in cases where the Postmaster

General has exceeded his authority under the statute, *School of Magnetic Healing* vs. *McAnnulty, 187 U. S., 94,* we think it within the power of Congress to entrust him with the power of seizing and detaining letters upon evidence satisfactory to himself, and that his action will not be reviewed by the court in doubtful cases."

"*That the party injured has a right to invoke the judicial power of the Government whenever his property rights have been invaded by the exercise of such power, was settled by this court in Noble* vs. *Union River Logging Railroad, 147 U. S. 965,* as well as in the McAnnulty case."

And see *Degge* vs. *Hitchcock, 229 U. S., 162, (1912),* in which the Court held that certiorari did not lie from action of Postmaster General in such cases, because, per Mr. J. Lamar:

"Had there been an arbitrary exercise of statutory power or a ruling in excess of the jurisdiction conferred, they had the right to apply for and obtain appropriate relief in a court of equity."

Pennsylvania Rule.

While we insist that an opportunity to appeal is not necessary to sustain the constitutionality of this tribunal, and that, therefore, the Court is not concerned with this question, yet what has already been said is consistent with the Pennsylvania Courts on the subject.

The Act of Assembly has been passed upon by the Pennsylvania Supreme Court in two cases.

First, in the case at bar, in which the injunction was granted,

> "Until the width of such a boundary pillar, or the absence of necessity for one shall be determined by said inspector and engineers, and surveys made and filed as required by the Act, or until they shall duly decide that no such pillar is needed for the safety of the employees of either mine."

The second case of *Curran* vs. *Delano, 235 Pa., 478,* follows the case at bar. In that case the Court held that the chancellor sitting in equity would not fix the width of the barrier pillar, but continued the injunction, and returned the bill.

> "Until the width of the boundary pillars or the absence of necessity for one shall be determined by the inspector and engineers, or until the inspector and engineers shall decide that no pillar is needed for the safety of the employees of either mine."

The Supreme Court of Pennsylvania did not decide that the courts had no equity jurisdiction to control any judgment which was unreasonably fraudulent or corrupt.

In the case of *Brymer* vs. *Butler Water Co., 179 Pa., 231* the question at issue was the supervisory power over water companies. It arose on a bill for an injunction to restrain the company from collecting water rents alleged to have been excessive. The court below found them excessive and undertook to revise the entire schedule of prices. The Supreme Court said, page 253:

> "The framing of such a general schedule is ordinarily the right of the company. The correction of this schedule when framed, whenever it may work injustice and hardship is the perogative of

the court, and one which should be fearlessly exercised.

It is, therefore, contended that the Plaintiff in Error has the right of appeal from any unreasonable, corrupt, or fraudulent judgment of the tribunal created by the Act of 1891, although the statute does not in terms provide for an appeal.

And that under the Pennsylvania authorities, while a court of Equity would not review the action of the tribunal and fix the width of the pillar, yet if the court deemed the width as fixed, so arbitrary as to be a violation of due process, it would send the matter back to the tribunal to fix a reasonable and proper width.

4. The Plaintiff in Error also contends:

In case of disagreement, the solution of the question may be delayed to embarrass the mining operations of the owners, and throw hundreds of workmen out of employment.

The conclusive answer to this proposition is that the Plaintiff in Error not having submitted itself to this tribunal, whether the determination of the question by some tribunal in some other case might harass the operation of some other owner is academic and Plaintiff in Error cannot raise this question.

"It is a firmly established principle of law that no one can be allowed to attack a statute as unconstitutional, who has no interest in it, and is not affected by its provisions. This rule applies to all cases both at law and in equity, and is equally applicable in both civil and criminal proceedings. *All constitutional in-*

hibitions against the taking of private property without due process of law and all constitutional guaranties of equal rights and privileges are for the benefit of those persons only whose rights are affected and cannot be taken advantage of by any other persons."

8 Cyc. 787-788 and Notes 90-92.
Smith vs. *McCarthy, 66 Pa. 359, 362.*

Hatch vs. *Reardon, 204 U. S., 143* seems to clinch this proposition. It is said, page 160:

> "But there is a point beyond which this court does not consider arguments of this sort for the purpose of invalidating the tax laws of a State on constitutional grounds. This limit has been fixed in many cases. *It is that unless the party setting up the unconstitutionality of the State law belongs to the class for whose sake the constitutional protection is given, or the class primarily protected, this court does not listen to his objections, and will not go into imaginary cases, notwithstanding the seeming logic of the position that it must do so, because if for any reason, or as against any class embraced, the law is unconstitutional, it is void as to all.* * * * If the law is valid when confined to the class of the party before the court, it may be more or less of a speculation to inquire what exceptions the state court may read into general words, or how far it may sustain an act that partially fails."

5. The Plaintiff in Error also contends:

That the act requires owners of coal properties to have engineers in their employ, whereas a number of such owners have no engineers.

This objection does not seem to be very serious. If

the deprivation of the right to mine the barrier pillar is as serious as the Plaintiff in Error suggests, the fact that a mine owner may have to employ an engineer to represent his interests at the meetings to determine the width of the barrier pillar does not seem to impose upon him a more onerous burden than ordinarily exists when litigants have to employ counsel to protect their interests in court.

The coal mine which can be intelligently, safely and successfully operated without the aid and guidance of a competent and experienced engineer does not exist; and if the anthracite coal region of Pennsylvania contains a mine whose owner is conducting his operations on any other plan, that mine cannot be shut down any too soon.

Moreover, there is no allegation in this case that the Plaintiff in Error does not have an engineer and as has already been said he is in no position to raise this question.

6. It is further contended:

That it does not provide for notice to all parties having vested rights in coal properties.

The answer to this proposition is that the parties having vested rights are not complaining, and the Plaintiff in Error is in no position to complain for them.

As a matter of fact, *he had both notice and an opportunity to be heard, and he refused to accept them.* The adjoining property owners engineer and the inspector did not proceed to an ex-parte determination of the width of the pillar and *the plaintiff in error is in no position to complain that the determination of the engineers and the inspector would not have been fair and*

reasonable. Not having submitted to that determination, of course he can not complain that he has been denied any right of appeal therefrom. He is exactly in the position of the plaintiff in error in *Bradley* vs. *Richmond, 227 U. S., 477, 1913 (supra)* who questioned the constitutionality of an act providing that certain city officials should have the right to classify businesses and by their classification fix the amount of license tax to be paid. The determination of these officials was to be made only after a hearing and was subject to an appeal to the council. The plaintiff in error did not appear nor did he appeal, and the court said, per Mr. Justice Lurton:

> "Of the right to appear and be heard plaintiff in error elected not to avail himself. Under the circumstances he is not warranted in resorting to the extraordinary jurisdiction of this court to arrest an administrative error susceptible of correction by an appeal to the council." Citing *Gundling* vs. *Chicago, 177 U. S., 183, 186, and Chicago, B & O. Railroad* vs. *Babcock, 204 U. S., 585.*

The situation of the Plaintiff in Error here is very similar to that of the Plaintiff in Error in the case of *Straus* vs. *Foxworth,* decided by this Supreme Court, November 17, 1913, and not yet reported. In that case Mr. Justice Van Devanter said:

> "It is contended, however, that the remedial or relieving provision is so broad in its terms as to give effect to a sale not founded upon a prior assessment or where no opportunity was afforded for a hearing in opposition to the tax, and therefore that it is violative of due process. To this it is a sufficient answer to repeat what was said in *Castello* vs. *McConnico, 168 U. S., 680,* in disposing of

a like contention. "But as thus stated the proposition presents a purely moot question. The Plaintiff in Error has no interest to assert that the statute is unconstitutional *because it might be construed so as to cause it to violate the constitution. His right is limited solely to the inquiry whether in the case which he presents the effect of applying the statute is to deprive him of his property without due process of law.'* "

7. The last attack of the Plaintiff in Error is:

That it does not provide for a hearing where the owners or parties interested have an opportunity to appear.

This attack has already been thoroughly answered and disposed of.

Kindred Authorities in Pennsylvania.

For the information of this court the decisions of the Judges of Pennsylvania, who are familiar with local conditions, upon this Act of 1891 and similar Acts of Assembly are here given.

Precisely the same question was raised in the Common Pleas of Lackawanna County in the case of *The Sterrick Creek Coal Company* vs. *The Dolph Coal Company, Ltd.*, reported in *II Lacka. Jurist at page 219.* In that case, Judge Edwards, following the finding of Judge Ferris in the case at bar, said:

> "Defendant therefore protests against taking its property without due process of law, and against appropriating its property to a public use without just compensation being first made."

"Nevertheless, the State, in the exercise of its police power, has the right to do this very thing. It can take a citizen's property, under certain circumstances, without paying for it."

Since the argument in the case at bar, Judge Ferris, of the Luzerne County courts has written an opinion on the question of the constitutionality of the barrier pillar law, covering exactly the same objections and points now made before us. It has always been clear to us that the Legislature has wisely exercised its police power in the enactment of its mine laws to preserve the health and safety of the mine employees; and there is no part of these laws more essential to accomplish that purpose than the provision relating to barrier pillars."

"The case mentioned is that of Commonwealth &c. vs. Plymouth Coal Company, XV Luz. Reg., 91. We refer to the discussion of the learned judge in the case cited, and we adopt as our own the part of the opinion treating the question of the constitutionality of the mine barrier pillar law, making it unnecessary for us to go over the same ground."

The constitutionality of this section of the Act of 1870, upon which a similar section in the Act of 1891 is founded, was attacked in *Commonwealth* vs. *Samuel Bonnell et al.*, reported in *8 Phila, Reports, page 534.*

This section in the Act of 1870, provided, and in the Act of 1891, still provides, that every mine in the anthracite regions shall have at least two shafts, slopes or outlets, separated by natural strata, of not less than one hundred and fifty feet in breadth, by which shafts, slopes or outlets, distinct means of ingress and egress are always available to persons employed in the said coal mine or colliery. Here was the taking of mine-

owner's property, (his money), by compelling him to provide an opening at great cost, *without compensation,* and by compelling him to furnish in that opening distinct means of ingress and egress for his employees. The purpose of the section is clear. It was intended to provide for an emergency which "may never arise," to wit, something that might close up or block the main avenue of egress from his mines. Yet this section was held to be constitutional in the case last above cited, by Judge Harding, who said inter alia:

> "If the Commonwealth of Pennsylvania, through her Legislature, can police our towns and cities, why may she not police the coal mines within her borders? If through her Legislature she can attach conditions, rules, and regulations, which are to be observed by her citizens in the use of their own peculiar property, what is there about coal mines, or the owners thereof, that should specially exempt them from her supervision and control? If she recognizes, almost as a part of her organic law, applicable to the *property* of her citizens, the rule, long ago grown into a maximum, *sic utere tuo ut alienum non laedas,* why may she not make it equally applicable to the *lives* of her citizens? The Act, as we view it, is nothing more nor less than a mandate to the operators of coal mines, that they shall so work them as not to injure the health, nor endanger the lives of persons employed in and about them. Of its constitutionality we have not the slightest doubt. It stands upon the statute book, known of all men, as the offspring of 'Avondale.' Of its propriety and its necessity the lawmaking power was taught not a moment too early. And we may say, now, that had its provision been faithfully observed by the operators, or stringently enforced by the officer whom it called into exis-

tence, there would have been, in all human probability twenty more living, industrious, producing human beings, and fifty less widows and orphans in 'West Pittston' than there are to-day."

This decision was cited with approval by Justice Brown in *Holden* vs. *Hardy, 169 U. S., page 394 and 395.*

Again in *Commonwealth ex rel. Williams* vs. *Wilkes-Barre Coal Company, 29 Legal Intelligencer, page 213,* where the same section of the Act of 1870 was attacked on the ground of its violating the constitution, Judge Harding, affirming his views, announced in the Bonnell case, held the Section to be in no way violative of any constitutional right.

In *Commonwealth ex rel. Williams* vs. *The Kingston Coal Company, 6 Kulp, 241,* Judge Rice, now President Judge of the Superior Court of this State, upheld Section five of Article four of the Mining Act of 1891. Although the attack in this case was not made directly upon constitutional grounds, the Court discussed in his opinion the police powers of the State and its relation to the Act in question.

This section of the Act provides that no breaker or other inflammable structure shall be erected nearer than two hundred feet to the entrance of any opening connecting the surface with the underground workings of any mine. In the case last cited the defendant company purposed to build a breaker over the mouth of a shaft to immediately replace a breaker which had been destroyed by fire. The Court restrained it from so doing notwithstanding the fact that to place the breaker in accordance with the Act would visit upon the company a great burden by compelling it to either purchase additional land or to construct, at a great cost, inclined

planes. This is a clear illustration of the power of the Legislature, by police regulation, to take the mine owner's property (his money) for public use without due compensation. Speaking of the validity of the Act, Judge Rice (Page 243) said:

> "It has been well said that the police power of a State is a proper subject for description rather than definition, and I shall not undertake what abler men have confessed their inability to do. But after a careful and thorough examination of the question we have no doubt that the regulation under consideration is one which was fairly within the power of the legislature to make. It is quite as unobjectionable on constitutional grounds as a law permitting municipal corporations to establish fire limits and to prohibit the erection of frame buildings within the same, or as the law requiring the owners of hotels, manufactories, &c., to provide fire escapes, or as those provisions of the first mine ventilation law which were sustained as within the constitutional powers of the Legislature. * * * * * * * * * * * * *The Act of 1891 is in the same line as the Acts of 1870 and 1885, and is the product of the knowledge gained by the experience and investigation of the twenty-one years that have elapsed since it became apparent to all that the subject was one which warranted and imperatively demanded the exercise of the police power of the State.* The provision under consideration clearly relates to, and is manifestly calculated to secure the safety of the large body of men employed in the mines, and the Legislature could have had no other purpose in passing it. Possibly men may differ as to the expediency of the measure, but no one can say that it is an unwarranted invasion of private rights, for an ul-

terior purpose, under the guise of a police regulation. The power of the Legislature to make the law being clear, the question, whether the Court has discretionary power to set it aside or refuse to enforce it in a particular instance, because, in the opinion of witnesses, it is an unnecessary regulation in that case, is free from difficulty."

THE ONLY OTHER BARRIER PILLAR CASE.

The only barrier pillar case decided by an appellate court of any State, so far as a careful search reveals, is the case of *Mapel* vs. *John*, reported in *42 W. Va., page 30*, and also in *32 L. R. A., page 800*. The Mining Act of West Virginia which was therein attacked, provides, inter alia, as follows:

"No owner or tenant of any land containing coal shall open, or sink, or dig, excavate or work in any coal mine or shaft, on such land within five feet of the line dividing said land from that of another person or persons, without the consent, in writing, of every person interested in, or having title to, such adjoining land," etc.

The Supreme Court held this provision to be a proper exercise of the police power of the State and not unconstitutional by reason, as claimed by the appellant, that it was an infringement on the rights of private property. In its opinion sustaining the constitutionality of the aforesaid provision of the Act of Assembly the Supreme Court of West Virginia said (Pages 803-804):

"This is no undue assumption of the right to apply the police power to a subject which does not fall within it; for regulations on all these

subjects have long been recognized as wholesome and reasonable, and as fit subjects for the exercise of the police power, as tending to preserve the rights of the citizens and to promote the welfare of the Commonwealth. The mining of coal is one of the largest industries carried on in the State. In mining, proper support and ventilation are necessary * * * for the health and safety of the miner engaged in a dangerous employment, and for that reason the public welfare requires it. * * * *Thus we see that this rib of solid coal not to be mined into by either of the adjoining owners was to be contributed by each in equal parts, for the mutual benefit of each, for the protection of the surface, to secure independent systems of ventilation, drainage and workings, and in aid of an industry so great and widely diffused that the State as a whole is interested therein.* * * * *This regulation works no hardship on one for the benefit of the other, but is impartial, just and reasonable, imposing a common burden for the benefit of all such owners.*"

THE LONG ACQUIESCENCE IN THIS ACT OF ASSEMBLY IS ENTITLED TO GREAT WEIGHT IN DETERMINING ITS CONSTITUTIONALITY.

While the barrier pillar section has been on the statute books since 1891, we find no other instances in the twenty years which have passed since its enactment, where its constitutionality has been questioned. While this circumstance is not conclusive in its favor, yet it is a strong argument that it is not so plainly

repugnant to the constitution as it must be to require the Court to overturn an Act of the Legislature.

Judge Rice in the case of *Commonwealth* vs. *Kingston Coal Co., 6 Kulp, 241, supra*, said:

> *"The act of 1891 * * * is the product of the knowledge gained by the experience and investigation of the twenty-one years that have elapsed since it became apparent that the subject was one which warranted and imperatively demanded the exercise of the police power of the state."*

In *Mapel* vs. *John, 32 L. R. A. 800*, the Supreme Court of West Virginia said:

> "This regulation, in substance, has been in force for more than sixty years without complaint. This is a high degree of evidence that it is not an unconstitutional exercise of police power to require this natural boundary wall to be preserved intact."

In *Lewis' Sutherland Statutory Construction, Vol. 1, page 134*, it is said:

> "Acquiescence in the validity of a statute for many years will have weight, if there is room for doubt."

In *Detroit City Railway Company* vs. *Mills, 85 Mich. 634*, it is held:

> "In construing the constitutionality of a statute, as well as in interpreting a provision of the Constitution itself, the practical construction which

the people have placed upon it during a series of years will be adopted by the courts, unless there is a clear infraction of some constitutional provision; citing Cooley, Const. Lim. (6th ed.) 81."

Continental Improvement Co. vs. *Phelps, 47 Mich. 299;*
Bohmer vs. *Haffen, 22 N. Y. Misc. Rep. 565.*

In *Cameron* vs. *Chicago, etc. Ry. Co. 63 Minn. 384.* the statute had been in force twenty years, and the Court said, page 388:

> "This acquiescence, without question, of bench and bar, in the validity of the statute, is significant; and it is entitled to controlling weight if the question as to the validity of the statute is doubtful."

The evidence in this one case shows that the value of the coal in the barrier pillar amounts to $300,000. The value of all of the coal in barrier pillars in all of the anthracite coal regions of Pennsylvania amounts to millions of dollars. The acquiescence of the owners of this vast amount of property in the necessity for, and the reasonableness of, this legislation for twenty-one years, should go far to determining the constituticnality of this statute.

Conclusion.

It is, therefore, confidently submitted that every question of the constitutionality of the Act of 1891 has been conclusively answered; that it has been demonstrated that the Act of Assembly provides for notice

and for an opportunity to be heard before the best kind of a tribunal suited to the nature of the case, and that it in no sense deprives the owner of the coal required for a barrier pillar of that property "without due process of law."

Therefore, the judgment of the Supreme Court of Pennsylvania should be affirmed.

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